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APPENDIX

In the Supreme Court of the United States

October Term, 1967
No. 34

ROGER A. REYNOLDS, MAYER I. BLUM, HERBERT R. CAIN, JR., KATHERINE M. KALLICK, ROSALIE KLEIN, ALFRED J. LAUPHEIMER, EDWARD O'MALLEY, JR., NORMAN SILVERMAN, JULIA L. RUBEL, Constituting the Philadelphia County Board of Assistance, WILLIAM P. SAILER, Its Executive Director; MAX D. ROSENN, Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania; WILLIAM C. SENNETT, Attorney General of the Commonwealth of Pennsylvania,
Appellants

v.

JUANITA SMITH, Individually, and by Her, Her Minor Children, JOHN SMITH, TABITHA MILLER, SOPHIA PAYNTER, WILLIAM PAYNTER, VONCELL PAYNTER, and on Behalf of All Others Similarly Situated
and
JOSE FOSTER, Individually, and by Her, Her Minor Children, JEANETTE FOSTER, ANNIE BEA FOSTER, WILLIAM FOSTER, FRANCES FOSTER,
Appellees

On Appeal from the United States District Court for the Eastern District of Pennsylvania.

Appeal Docketed February 21, 1968
Probable Jurisdiction Noted March 4, 1968

TABLE OF CONTENTS

	Page
APPELLANTS' APPENDIX:	
I. Relevant Docket Entries	1a
II. Complaint	3a
III. Motion for Temporary Restricting Order	10a
IV. Order Dated March 31, 1967	14a
V. Answer	16a
VI. Hearing sur Plaintiffs' Motion for Preliminary Injunction:	
PLAINTIFFS' EVIDENCE	
	Dir. Cr.
Juanita Smith	29a 40a
Reba Haimowitz	43a 46a
VII. Continued Hearing sur Plaintiffs' Motion for Preliminary Injunction:	
PLAINTIFFS' EVIDENCE	
	Dir.
Deborah Davis	80a
S. J. Brody	107a
Florence Silverblatt	120a
VIII. Motion for Determination	133a
IX. Order Dated May 31, 1967	135a
X. Opinion Dated June 1, 1967	136a
Decree	140a

XI. Affidavits:
(1) Affidavit of Jose Foster 141a
(2) Affidavit of Louise Thompson 143a
XII. Order Granting Intervention 145a
XIII. Temporary Restraining Order 147a
XIV. Opinions of the Court 149a

APPELLANTS' APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 42419 Civil Action

Juanita Smith, individually, and by her, her minor children, John Smith, Tabitha Miller, Sophia Paynter, William Paynter, Voncell Paynter, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

Roger A. Reynolds, Mayer I. Blum, Herbert R. Cain, Jr., Katherine M. Kallick, Rosalie Klein, Alfred J. Laupheimer, Edward O'Malley, Jr., Norman Silverman, Julia L. Rubel, constituting the Philadelphia County Board of Assistance, William P. Sailer, its Executive Director, Max D. Rosenn, Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania, William C. Sennett, Attorney General of the Commonwealth of Pennsylvania,

Defendants

I.

RELEVANT DOCKET ENTRIES

1967

3-31, Petition to proceed in forma pauperis and Order granting same filed.

3-31, Motion to convene a three judge court and complaint filed.

4-21, Answer filed.

5-5, Transcript of hearing 5-3-67 filed.

5-10, Defendants' memorandum of law filed.

5-29, Motion of plaintiff re Class action—Order to be entered.

5-31, Motion and Order that this action be maintained as a class action filed.

6-1, Findings of fact, discussion and conclusions of law.

6-1, Decree that defendants are preliminarily enjoined from enforcing Sections 9 (a) and 9 (d) of the Act of June 24, 1937, P.L. 2051 as amended and from withholding relief benefits from plaintiffs.

7-7, Transcript of hearing of May 29, 1967 filed.

11-9, Motion of Jose Foster, individually, and by her, her minor children, Jeanette Foster, Annie Bea Foster, William Foster and Frances Foster, to intervene as plaintiffs.

11-14, Order granting leave to intervene.

12-18, Opinion and Decree that defendants are permanently enjoined from enforcing the Public Welfare Code residence requirement.

1968

1-2, Notice of appeal of defendants to The Supreme Court of the United States.

In the United States District Court for the Eastern District of Pennsylvania

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(Title Omitted in Printing)

II.

COMPLAINT

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1. The jurisdiction of this Court is invoked under Title 28, U.S.C. Sec. 1343, 42 U.S.C. Sec. 1983, 28 U.S.C. Secs. 2281, 2284, and 28 U.S.C. Secs. 2201, 2202, this being an action for declaratory judgment and preliminary and permanent injunction to redress the deprivation under color of state law of rights, privileges and immunities secured to plaintiffs by the United States Constitution.

2. The plaintiffs are:

(a) Juanita Smith, an expectant mother, and her minor children, John, Tabitha, Sophia, William and Voncell, citizens of the United States and residents of the Commonwealth of Pennsylvania with their place of residence at 2859 Amber Street, Philadelphia, Pennsylvania;

(b) All other persons, citizens of the United States and residents of the Commonwealth of Pennsylvania, who would be entitled to public assistance except that they have not resided in Pennsylvania during the immediately preceding one year.

3. Juanita Smith, John Smith, Tabitha Miller, Sophia Paynter, William Paynter and Voncell Paynter fairly and adequately represent the class of Pennsylvania residents described in Paragraph 2 (b) above, on whose behalf they sue, and the persons constituting said class are so numerous as to make it impractical to bring them all before this Court.

4. The defendants are:

(a) Roger A. Reynolds, Mayer I. Blum, Herbert R. Cain, Jr., Katherine M. Kallick, Rosalie Klein, Alfred J. Laupheimer, Edward O'Malley, Jr., Norman Silverman and Julia A. Rubel, who comprise the Philadelphia County Board of Assistance, and are duly appointed and qualified members of the said Board and citizens of the Commonwealth of Pennsylvania;

(b) William P. Sailer, Executive Director of said Board and a citizen of the Commonwealth of Pennsylvania;

(c) Max D. Rosenn, Secretary of Public Welfare of the Commonwealth of Pennsylvania and a citizen thereof;

(d) William C. Sennett, Attorney General of the Commonwealth of Pennsylvania and a citizen thereof.

The foregoing public officers are charged, under the Public Assistance Law of the Commonwealth of Pennsylvania, with the enforcement, operation and execution of the provisions thereof. The County Board of Assistance and its Executive Director are particularly charged with the administration of public assistance and determination of the eligibility of applicants and the continued eligibility of persons re-

ceiving assistance in accordance with said law. The Public Assistance Law of the Commonwealth of Pennsylvania was enacted on June 24, 1937, P. L. 2051, Sec. 1 et seq., 62 Purd. Stat. Sec. 2501 et seq. The relevant provisions of the said Act, as amended, are attached hereto as Exhibit A.

5. The Act of June 24, 1937, P. L. 2501, Secs. 9 (a) (2) and 9 (d), as amended, 62 Purd. Stat. Sec. 2508.1 (6) provides that assistance shall be granted only to or in behalf of a resident of Pennsylvania who has resided therein for at least one year immediately preceding the date of application.

6. Plaintiffs have resided at 2859 Amber Street, Philadelphia, Pennsylvania since the second week of December, 1966, when they came to Pennsylvania from Lincoln, Delaware, and intend to reside permanently in the Commonwealth of Pennsylvania.

7. Plaintiff Juanita Smith's paternal and maternal grandparents were born and raised, worked and owned houses in Philadelphia. Plaintiff's father and mother were born and raised and presently reside in Philadelphia.

8. Plaintiff was born March 8, 1943 in the Army Hospital at Petersburg, Virginia, where her father was stationed, and at one month she returned with her mother to Philadelphia.

9. Plaintiff resided continuously in Philadelphia but for several months until 1959 and attended public schools here.

10. From 1959 to December last, plaintiff lived and worked in Delaware.

11. Plaintiff returned with her children to Philadelphia in December, 1966 to rejoin her family, seeking better education and health care and job opportunities for her children and herself and attempting to escape the vestiges of segregation.

12. Plaintiff's rent through February, 1967 and her expenses were borne by her father but in January, 1967 he was laid off from his job and has since been unemployed.

13. Plaintiff's mother is similarly unemployed and is sickly.

14. On February 20, 1967, plaintiffs made application for public assistance and that day received a grant of $115.00.

15. A second grant in the same amount was received two weeks later on March 10, 1967.

16. On March 13, 1967, plaintiff Juanita Smith was informed by the County Board of Assistance that assistance to her and her children would be terminated. A copy of the formal notice of termination is attached hereto as Exhibit B.

17. Assistance to plaintiffs was terminated solely because they did not satisfy the statutory requirement of one year's residence immediately preceding their application.

18. Plaintiff Juanita Smith, without any source of income, faces a $63.00 gas bill for heating her house, rent due April 1, 1967, and the continuing necessity of caring for her children and maintaining herself. Plaintiffs are in immediate and irrevocable need of

public assistance and but for the residence requirement are fully entitled to receive it. Plaintiffs are suffering and will suffer immediate and irreparable injury from termination of public assistance.

19. The Act of June 24, 1937, P. L. 2501, Secs. 9 (a) (2) and 9 (d), as amended, 62 Purd. Stat. Sec. 2508.1 (6) requiring as a condition of public assistance that plaintiffs reside in Pennsylvania for one year immediately preceding application is contrary to the United States Constitution in that,

(a) the purpose of said Act is to exclude indigent citizens from the Commonwealth which purpose is impermissible and repugnant under the privileges and immunities clause of the Fourteenth Amendment, the equal protection and due process clauses thereof and under the commerce clause, Article I, Section 8 of the Constitution;

(b) said Act burdens, penalizes and obstructs the exercise by citizens of the United States of the right freely to move from state to state, a right of national citizenship secured by the privileges and immunities clause of the Fourteenth Amendment;

(c) said Act burdens, penalizes and obstructs the free movement of persons from state to state, contrary to the commerce clause, Article I, Section 8 of the Constitution;

(d) said Act arbitrarily and unreasonably discriminates between citizens of the United States, nonresidents of the Commonwealth, hindering the movement into the Commonwealth only of those citizens who are poor, an invidious discrimination in viola-

tion of the equal protection clause of the Fourteenth Amendment;

(e) said Act unreasonably denies citizens of other states privileges and immunities accorded citizens of the Commonwealth, contrary to Art. IV, Section 2 of the Constitution;

(f) said Act arbitrarily and unreasonably discriminates between residents of the Commonwealth, citizens thereof, denying assistance to those not continuously resident in the Commonwealth during the immediately preceding one year while granting assistance to all others, an invidious discrimination in violation of the equal protection clause of the Fourteenth Amendment;

(g) public assistance, established to provide for all of the needy and distressed in the Commonwealth, is arbitrarily and unreasonably withheld by said Act from Pennsylvania residents not continuously resident in the Commonwealth during the immediately preceding one year, depriving plaintiffs of due process guaranteed by the Fourteenth Amendment.

Wherefore, plaintiffs respectfully pray that:

1. The Court convene a three-judge District Court as required by Title 28, U.S.C. Secs. 2281 and 2284.

2. The Court declare the Act of June 24, 1937, P. L. 2501, Secs. 9 (a) (2) and 9 (d), as amended, 62 Purd. Stat. Sec. 2508.1 (6) and any enforcement thereof unconstitutional.

3. The Court preliminarily enjoin and, after full hearing, permanently enjoin defendants from en-

forcing the Act of June 24, 1937, P. L. 2501, Secs. 9 (a) (2) and 9 (d), as amended, 62 Purd. Stat. Sec. 2508.1 (6).

4. The Court grant such further relief as shall be necessary and proper.

Respectfully submitted,

By (s) Thomas K. Gilhool
Consumer's Advocate

Community Legal Services, Inc.
313 South Juniper Street
Philadelphia, Penna.
Attorney for Plaintiffs

(Jurat omitted in printing)

In the United States District Court for
the Eastern District of Pennsylvania

(Title Omitted in Printing)

III.

MOTION

Pursuant to Title 28, U.S.C. Sec. 2284 (3) and Rule 65 (b), Fed. R. Civil P. and based upon the verified complaint herein, attached affidavits and certification of counsel, plaintiffs move the court for a temporary restraining order restraining defendants from failure to continue public assistance to plaintiffs.

The grounds in support of this motion are as follows:

1. Defendants, members of the County Board of Assistance and its Executive Director, having made public assistance payments to plaintiffs Juanita Smith and her five minor children on February 20, 1967 and March 10, 1967 each in the amount of $115.00, now propose to cease such payments.

2. Such termination is solely because plaintiffs had not resided in Pennsylvania for the one year immediately preceding their application and is under contest in the above titled action.

3. Unless restrained defendants will not continue public assistance to plaintiffs and plaintiffs, Juanita

Smith and her five minor children, left destitute and without income to support and maintain themselves, will suffer immediate and irreparable injury.

4. If this temporary restraining order be granted the injury, if any, to defendants herein, if final judgment be in their favor, will be inconsiderable.

Respectfully submitted,

(s) Thomas K. Gilhool
Consumer's Advocate

Community Legal Services, Inc.
313 South Juniper Street
Philadelphia, Penna.
Attorney for Plaintiffs

AFFIDAVIT

Commonwealth of Pennsylvania
County of Philadelphia, ss:

Juanita Smith, being first duly sworn, on oath, deposes and says:

1. That she is plaintiff in the present action and the mother of five children, by her, plaintiffs in the present action.

2. That since receipt of the $115.00 public assistance payment on March 10, 1967, she and her family have had no income, but for certain small amounts in temporary charity from the Traveler's Aid Society of Philadelphia.

3. That such amounts include $2.00 for carfare on March 27, 1967, a small food order and the promise of money to meet her rent due April 1, 1967.

4. That she is entirely without money or any source of money to pay a back gas bill of $63.00 due March 24, 1967; in default her heat will be turned off.

5. That she is without money or any source of money adequately to maintain her children and herself in health and at a minimal standard of subsistence.

6. That she has been refused medical care by Episcopal Hospital for her pregnancy and her children because she is not receiving public assistance.

7. That she and her children are suffering and will suffer immediate and irreparable injury from the failure of the County Board of Assistance to continue public assistance.

(s) Juanita Smith

Sworn to and subscribed before me this 31st day of March, 1967.

(s) Rosetta S. Frank
Notary Public

AFFIDAVIT

Commonwealth of Pennsylvania
County of Philadelphia, ss:

Catherine M. Kerner, being duly sworn according to law, on oath, deposes and says:

1. That she is Executive Director of the Travelers Aid Society of Philadelphia and that as such she is personally acquainted with the actions of the Society with regard to Juanita Smith and her five children.

2. That the Society cannot and will not pay Juanita Smith's back bills, including by way of example, the $63.00 gas bill for heating her house.

3. That the Society will meet the rent due of Juanita Smith on April 1, 1967 and will meet certain expenses as they arise including some provision for food.

4. That the Society's aid is both temporary and insufficient to maintain the family.

5. That the Society's aid is offered gratuitously as a charity to continue only pending the Society's determination as to whether it is best for the family to remain here or not, and if the Society's decision is negative the aid will continue only until an alternate plan, for example return to Delaware, can be arranged.

(s) Catherine M. Kerner

Sworn to and subscribed before me this 31st day of March, 1967.

(s) Rosetta S. Frank
Notary Public

(Affidavit of service omitted in printing)

In the United States District Court for the Eastern District of Pennsylvania

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(Title Omitted in Printing)

IV.

ORDER

Whereas, in the above titled action it appears by verified complaint and affidavits that a temporary restraining order preliminary to hearing upon motion for a preliminary injunction should issue, without notice because immediate and irreparable injury, loss and damage will result to plaintiffs Juanita Smith and her five minor children before notice can be served and a hearing had thereon, in that defendants will not continue public assistance to plaintiffs and will leave plaintiffs destitute and without income to support and maintain themselves.

Notice and a hearing before entering a temporary restraining order should not be required because time and the immediate jeopardy of plaintiffs do not permit such a hearing.

Now, therefore, on motion of the plaintiffs,

It is ordered that defendants, each of them, their agents, servants and employees, and all persons acting by, through or under them or either of them or

by or through their order be, and they are hereby, restrained from failing to continue public assistance to plaintiffs Juanita Smith and her five minor children.

Issued at ..... o'clock ..m. this day of March, 1967.

(s) Joseph S. Lord, III.
District Judge

Motion denied 3-31-67.

In the United States District Court for the Eastern District of Pennsylvania

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(Title Omitted in Printing)

V.

ANSWER

First Defense

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1. The defendant admits that the Public Assistance Law of the Commonwealth of Pennsylvania, the Act of June 24, 1937, P. L. 2051, by Section 8.1, added by the Act of August 26, 1965, P. L. 389, 62 Purdon's Penna. Statutes Annotated, Section 2508.1, provides, inter alia, for a one year period of residence as an eligibility requirement for public assistance benefits.

2. Defendants admit that Max Rosenn, Secretary of Public Welfare, has final responsibility for the administration of the public assistance laws of the Commonwealth of Pennsylvania, and that in the administration of said laws the said residence requirement is enforced.

3. Defendants admit the allegations contained in paragraphs 1, 2(a), 4(c), 5, 14, 15, 16 and 17 of the complaint; allege that they are without knowledge or information sufficient to form a belief as to the

truth of the allegations contained in paragraphs 6, 7, 8, 9, 10, 11, 12, 13 and 18 of the complaint; and deny each and every other allegation contained in the complaint.

Second Defense

---

1. Defendants deny that the residence requirements for public assistance eligibility deprive plaintiffs of any of the rights secured by the Constitution of the United States, as alleged in paragraph 19 of the complaint and, accordingly, aver that the complaint fails to state a claim against defendants upon which relief can be granted.

Edgar R. Casper
Deputy Attorney General

Edward Friedman
Counsel General

William C. Sennett
Attorney General
Attorneys for Defendants

Office of the Attorney General
Room 238, State Capitol Building
Harrisburg, Pennsylvania 17120

(Affidavit of service omitted in printing)

In the United States District Court for
the Eastern District of Pennsylvania

(Title Omitted in Printing)

VI.

HEARING SUR PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION
MAY 3, 1967

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(3) MR. GILHOOL: May it please the Court, I am Thomas Gilhool. I represent the plaintiffs in the action pending before Your Honors.

We are here this morning on plaintiffs' motion pursuant to Rule 65 for a preliminary injunction.

I should like initially to call the Court's attention to the admissions in defendants' answer to Paragraphs 14, 15, 16 and 17, as alleged in the complaint, and in particular to that allegation that assistance to plaintiffs at Paragraph 17—

JUDGE LORD: Excuse me. Just a minute.

MR. GILHOOL: Surely.

JUDGE LORD: Which paragraphs? 14, 15—

MR. GILHOOL: 14, 15, 16 and 17, among others, were admitted. These were most pertinent, particu-

larly Paragraph 17, wherein the Commonwealth and other defendants here admit that:

> "Assistance to plaintiffs was terminated solely because they did not satisfy the statutory requirement of one year's residence immediately preceding their application."

JUDGE KALODNER: There is no doubt about it. The single question here is one of law, isn't it? It is a question that this particular person is disqualified or not (4) qualified to receive unemployment relief because she lacks qualification.

MR. GILHOOL: I quite agree, that is the question; there is a large question of that—

JUDGE KALODNER: It is the single question.

MR. GILHOOL: Yes, sir.

JUDGE LORD: You say there is a violation of various constitutional provisions.

MR. GILHOOL: I am here this morning on preliminary injunction and I should like to present evidence to the Court as to irreparable harm and the other matters that concern the Court in the present posture of the case.

I should have in a moment a memorandum of law to hand up to Your Honors and should be pleased to present testimony on that point.

JUDGE KALODNER: Do you think you need that testimony in light of the fact this woman was on relief for two months and the relief was only stopped because she failed to meet the one year residence requirement?

MR. GILHOOL: Your Honor, I am satisfied to omit the testimony, if Your Honor thinks it appropriate.

The testimony I would offer would be offered to prove that the assistance that plaintiffs have received from Travelers Aid since late March when public assistance (5) had been discontinued and the moneys therefrom had expired is itself about to be terminated.

If Your Honors think that question is germane I should be pleased to proceed to proof.

JUDGE LORD: I wonder if that couldn't be stipulated?

MR. CASPER: Your Honors, I am not quite sure what kind of testimony Mr. Gilhool is willing to put in.

JUDGE KALODNER: Ask him.

MR. CASPER: Very well, but I would like to say this: If he is willing to put in, for example, somebody from Travelers Aid, if he is trying to show that Travelers Aid will give no assistance or very little if public assistance is discontinued, I am sure I could stipulate to that, but on the other hand my question is that doesn't necessarily constitute irreparable harm.

In other words, I don't think this is relevant testimony.

JUDGE LORD: Well, that is another question. It is up to us to decide whether it constitutes irreparable harm.

All we are asking you to do in order to shorten this is to stipulate the facts.

MR. CASPER: Your Honor, I am willing to (6) stipulate to facts that are in the affidavit of the lady from Travelers Aid.

MR. GILHOOL: That affidavit, Your Honors, was executed on March 31 and therefore the particular facts as stated there are rather changed.

Travelers Aid assistance has proceeded from the end of March to the present date. Travelers Aid has notified plaintiffs that they can continue assistance no longer than a week from now.

The ground of that notification is inherent in the nature and the purpose of Travelers Aid. They offer temporary relief pending the completion of an analysis of a case and a judgment on their part as to whether continued assistance is either possible or appropriate within the limits of their budget.

In this case, Your Honors, Travelers Aid has had sufficient time to secure the appropriate information from the state from which plaintiffs here come. Their judgment therefore is that since she is or would be eligible for public assistance in Delaware, Travelers Aid Society of Philadelphia cannot and will not continue assistance.

Plaintiffs are therefore faced with the choice of remaining here with no income on which to maintain themselves, or returning to Delaware and thenceforth forfeiting (7) the very rights they are claiming under this action.

JUDGE KALODNER: Why can't you stipulate to that?

MR. CASPER: I can stipulate to that, Your Honor.

MR. GILHOOL: There is one other matter that would have been the subject of proof and that is plaintiff's previous contacts with Pennsylvania; the fact that her parents were born here and reside here; that her grandparents lived, worked here in this state; that plaintiff herself, Juanita Smith, while not born in Pennsylvania did return with her mother to Pennsylvania at the end of one month and was raised here in Pennsylvania, attended schools here, and in 1959, having finished the ninth grade at Harding Junior High School, removed to Delaware and did not return until last December.

Is there a stipulation as to that?

MR. CASPER: I would be willing to stipulate to that, Your Honors.

JUDGE KALODNER: All right.

MR. GILHOOL: If Your Honor please, may I submit my brief?

JUDGE LORD: Is there any reason why we couldn't treat this as if on final hearing?

MR. GILHOOL: Not from my perspective, except (8) for the urgency of relief for plaintiff in this matter.

JUDGE LORD: Well, I would think that we could decide this just as quickly as if on final hearing as we could on preliminary injunction.

MR. CASPER: Except for this, Your Honors. I understood Mr. Gilhool's intent to be—

JUDGE KALODNER: Just a minute. I can't hear you. With the whir of this air conditioner I can't hear you.

MR. CASPER: I understood it was Mr. Gilhool's intention to confine his argument today to the proposition that whatever the merits on the constitutional question, if this lady were not to be paid public assistance she would suffer irreparable harm and therefore would ask your Court for a preliminary injunction pending final disposition of the case.

MR. GILHOOL: It was my intention certainly to confine my evidence to that question.

JUDGE KALODNER: But you have to establish a right.

MR. GILHOOL: As Your Honor suggests there is no question but that this action raises a serious constitutional challenge to Section 816.

JUDGE KALODNER: There is no question in your mind.

(9) MR. GILHOOL: Well, I perhaps suggest, Your Honor, even that there is no question in your mind so far as preliminary injunction is concerned.

I am prepared, however, to go beyond that today.

JUDGE KALODNER: If you gentlemen want to agree—you haven't answered Judge Lord's question.

Do you want to treat this as if on final hearing?

MR. CASPER: How would Your Honors propose to proceed as if on final hearing; with briefs to be filed after any argument we might wish to make today?

JUDGE LORD: Certainly, you can do that.

MR. CASPER: Yes, I am merely saying that because I thought again the original understanding was that here are plaintiffs and they are coming in challenging an old law and saying this is unconstitutional.

We felt we could sit back, as it were, and say go ahead, prove it, and see their briefs and look at their argument and their authorities in detail before we took any kind of a firm position. Now, of course—

JUDGE KALODNER: You were acquainted with their contentions set forth in the complaint. Why did you need briefs in order to prepare?

(10) MR. CASPER: I think, Your Honor, there is somewhat of a difference between a contention—the complaint is like a kitchen sink complaint on the United States Constitution; the privileges and immunities clause, the due process clause, the commerce clause; I am sure that—

JUDGE KALODNER: You were acquainted with the fact that those were the bases of their contentions.

MR. CASPER: Yes, but the question of what argument—

JUDGE KALODNER: You have no brief then?

MR. CASPER: We have no brief, no. We have not received a brief from Mr. Gilhool either.

JUDGE KALODNER: What is your name, sir?

MR. CASPER: Edgar Casper.

JUDGE KALODNER: You are a deputy attorney general?

MR. CASPER: Yes, sir. I would be agreeable, Your Honors, if it suits you and Mr. Gilhool, to proceed on this basis, to get into the question of the merits as long as first of all we are not restricted with respect to our rights of responding to a brief that plaintiff puts in.

JUDGE LORD: Let me ask you this, Mr. Casper. Are you, for example, familiar with, have you read and have you analyzed Edwards against California?

(11) MR. CASPER: Yes.

THE COURT: You are familiar with that?

MR. CASPER: Yes.

THE COURT: You are familiar with it, and I suspect, Mr. Gilhool, that is the thrust of your argument, isn't it?

MR. GILHOOL: Yes, sir. That is one of the thrusts of the argument.

The other, sir, among two additional points to be made, derive from Kent versus Dulles, Aptheker versus United States, and United States versus Guest; i.e., that the right to travel freely from state to state is a liberty to be exercised by plaintiffs here, that being established in light of Sherbert versus Verner.

The Commonwealth in this statute has conditioned the receipt of public assistance upon the surrender of

that liberty and as Sherbert holds, such a condition is unconstitutional.

Beyond that, Your Honor—

MR. CASPER: If I may say, Your Honors, I think you will find the argument, in whatever way it progresses, is going to raise complications in terms of analogical reasoning because the cases that plaintiffs rely on are somewhat removed from the actual context of this case.

(12) MR. GILHOOL: Are we proceeding to argument, Mr. Casper?

MR. CASPER: No, I was merely trying to define—forgive me, help clarify the problem presently before the Court as to how to proceed at this point.

JUDGE KALODNER: You are not prepared to go forward on an agreement?

MR. GILHOOL: Your Honors—

JUDGE LORD: Then we will hear you on preliminary injunction.

MR. GILHOOL: As to that, Your Honor, I understand we have on the record stipulations which go to the facts that I desire to prove today.

JUDGE LORD: Yes, you have a stipulation.

MR. CASPER: Yes.

JUDGE LORD: That the Travelers Aid which is the only aid that she is getting, is that correct, is about to terminate in the very near future.

Well, can you say when?

JUDGE SHERIDAN: You did tell us.

MR. GILHOOL: Yes, in a week.

JUDGE LORD: One week.

MR. GILHOOL: Yes, Your Honor.

JUDGE LORD: And that she has no other means of (13) subsistence.

MR. GILHOOL: Yes.

MR. CASPER: I did not—was not willing to stipulate to that, Your Honors.

JUDGE LORD: All right, you are not willing to stipulate to that.

MR. CASPER: No.

JUDGE LORD: Do you want to put your plaintiff on the stand?

MR. CASPER: I would like to say, for example, that there was nothing in the complaint, the motion, anything that I have seen that has been submitted by plaintiff that suggests, for example, that the City of Philadelphia was approached with respect to support of plaintiff under the Philadelphia Child Welfare Program. I have seen nothing so far. I have heard nothing about this.

JUDGE LORD: All right, you are entitled to hear it.

MR. GILHOOL: Your Honor, there are certain matters I should like to ask you to take judicial notice of.

One goes directly to the point just raised by Mr. Casper. I should like to ask the Court to take judicial notice of the Administrative Code of Pennsylvania governing the Philadelphia Child Welfare Program; that is the City of (14) Philadelphia Child Welfare Program referred to by Mr. Casper. That statute is to be found in 71 Purdon's Statute, 600, therein setting out the powers and responsibilities of the Department with respect to Child Welfare.

JUDGE KALODNER: What section?

MR. GILHOOL: 600. The Legislature has provided that such assistance shall be granted without regard to residence.

Your Honor, we have in the juxtaposition of that statute and the statute before the Court a considerable anomaly.

Child Welfare and the City's powers to expend money therefor and the Department's purpose in standing behind that arrangement provide that children who are in need or who are dependent or neglected may be placed in foster homes and the cost of their care will be borne by the State, incidentally, at a rate something like four times the assistance granted to those receiving aid to dependent children where the children are in their homes, so plaintiff is faced with the extraordinary fact that she cannot retain her children in her home and receive assistance.

If she is to receive assistance for those children she must part with those children and place them in foster care.

(15) A lengthy dissertation, Your Honor, on one statute—

JUDGE KALODNER: Is this woman married? I notice she has three sets of children, as it were. It doesn't say anything about her husband.

MR. GILHOOL: No, sir. She is not married.

Mr. Paynter, who is the father of the three youngest children, came to Pennsylvania with plaintiff.

I should like to proceed to that matter in testimony, if Your Honor please.

JUDGE KALODNER: All right.

MR. GILHOOL: Miss Smith.

JUANITA SMITH, sworn.

Direct Examination

BY MR. GILHOOL:

Q. Miss Smith, would you state for the Court your name and address?

A. Juanita Smith. I live at 2859 Amber Street.

Q. In Philadelphia?

A. Yes, in Philadelphia.

Q. Have you any children?

A. Yes, I have five and one on the way.

(16) Q. What are their names and ages?

A. Johnny Smith; he is six. Tabitha Miller; she is four. Sophia Paynter; she is three. William Paynter; he is a year and a half, and Voncell Paynter, she is nine months.

Q. How long have you lived at 2859 Amber Street?

A. Since the second week in December.

JUDGE KALODNER: Will you ask her to keep her voice up?

BY MR. GILHOOL:

Q. Miss Smith, can you keep your voice up?

JUDGE KALODNER: There is a whirl of an air conditioning machine above you.

MR. GILHOOL: Modern technology sometimes interferes.

BY MR. GILHOOL:

Q. Where did you live immediately before you came to Pennsylvania in December?

A. I lived in Lincoln, Delaware.

Q. And who did you live with there?

A. William Paynter. He is the father of my three —you know, the three smallest children and the father of the one I am going to have in September.

Q. Where were you born, Miss Smith?

A. Petersburg, Virginia.

(17) Q. And what previous connection have you had with Pennsylvania?

A. Well, I—well, my mother came back when I was a baby, I was a month old, and I went to school —went to a lot of schools up here.

BY JUDGE LORD:

Q. You went to what?

A. Schools, different schools up here, and I went back to Delaware in '59.

BY MR. GILHOOL:

Q. In 1959?

A. Yes.

Q. Will you describe the circumstances in which you lived in Delaware?

JUDGE KALODNER: Why don't we find out about the father of the other two children?

MR. GILHOOL: Your Honor, I think that matter irrelevant to the legal questions at stake here.

JUDGE KALODNER: We ought to have the facts about the father of the other children here; can they be sued for support?

You are talking about irreparable injury. There is a provision in the State law that she can get support from the father of those children by court order, isn't there?

(18) MR. GILHOOL: Yes, sir.

JUDGE KALODNER: All right, when you speak of irreparable injury you haven't considered apparently the fact that she can recover for it or she can receive support for these children by application and action of the State Court, in the Municipal Court, or the County Court, as it is now called.

MR. GILHOOL: Yes, sir, assuming the defendants in those actions can be located and the action can proceed expeditiously.

JUDGE KALODNER: Suppose the father of the other children can support them. That would have some bearing here.

BY MR. GILHOOL:

Q. Miss Smith, are you aware of—do you know where the father of John Smith is?

A. He is in Delaware. I had sued him when I was there and I had also sued James Miller, Tabitha's father, but they couldn't find either one of them at that time and I haven't heard anything from them.

Q. And you are presently unaware of their whereabouts?

A. I don't know where they are.

JUDGE KALODNER: The same holds true with the father—

(19) BY JUDGE KALODNER:

Q. You have a child, John Smith. You just told us you were never married, were you?

A. No.

Q. All right, you don't know where John Smith—where the father of John Smith is?

A. He was in Delaware and I had sued him.

BY MR. GILHOOL:

Q. When was that, Miss Smith?

A. About two years ago.

BY JUDGE LORD:

Q. Do you know where he is now?

A. No, I don't.

BY JUDGE KALODNER:

Q. Did you receive any support from him as a result of the suit?

A. No, I haven't heard anything from him at all.

Q. You said you sued him in Delaware. What happened?

MR. GILHOOL: Your Honor, I think Miss Smith testified that he was unable to be located.

BY MR. GILHOOL:

Q. Is that right?

A. Yes, and James Miller, Tabitha's father, was somewhere in Baltimore but they couldn't locate him.

(20) BY JUDGE LORD:

Q. Do you know where he is now?

A. No.

Q. How about the father of Sophia?

BY MR. GILHOOL:

Q. Mr. Paynter; where is Mr. Paynter at the moment?

A. Well, Mrs. Enty, when I was on public assistance, heard—she had heard he was in Delaware with his father. I have written to him four times but I received no answer.

Q. Do you know if Mr. Paynter is employed in Delaware?

A. Mrs. Haimowitz in Travelers Aid, she said he was unemployed.

Q. I wonder if you would tell the Court what Mr. Paynter's previous employment had been.

A. Well, in Lincoln he was working at the Shawnee Country Club. It is a seasonal job.

In the summertime he averaged $50 a week, you know, before they took everything out, but in the wintertime sometimes he came home with $21, sometimes less, but it wasn't enough to get along with.

Q. Would you describe further your circumstances in Delaware prior to your coming to Pennsylvania last December?

A. Well, my father came to visit us in December and we were staying in a trailer. It had two bedrooms, a kitchen, living (21) room, but no bathroom. We had to go to Milford to get water. That was about three miles.

Q. You had to go to Milford to get water?

A. Yes.

Q. You had no running water?

A. No, and we didn't have any electric, which we were using oil lamps. The closest school was a mile and a half.

Q. Did you work in Delaware?

A. Yes, I had to work in the wintertime because he didn't make too much.

BY JUDGE KALODNER:

Q. What kind of work did you do?

A. I worked at Draper Canning Company. It is a —you know, processes vegetables.

BY MR. GILHOOL:

Q. Why did you and William Paynter with your children decide to come to Philadelphia in December?

A. Well, I had wanted to come up here but when my father came down he saw the conditions which we were living under.

He said why—at that time he was working at United Parcel and he said that he could, you know, help us get a house and get the electric and stuff cut on until William could get a job, but when Mr. Paynter came up here he couldn't find a job so he went back to Delaware.

(22) Q. What were your reasons for coming beyond the job for Mr. Paynter?

A. Well, you could get better jobs up here than you can there and I did want to go back to school because I never went past the ninth grade and Mr. Paynter, he never finished the fourth grade.

BY JUDGE KALODNER:

Q. How old are you?

A. I am 24.

Q. 24?

A. Yes.

Q. Have you gone back to school since you were here?

A. No.

Q. Have you made any attempt to go back to school?

A. No, I can't leave the children alone. I don't have any babysitter.

JUDGE KALODNER: Did you get the ages of the children?

MR. GILHOOL: They are in the record, Your Honor.

BY JUDGE SHERIDAN:

Q. Did I understand you to say you are having another child?

A. Yes, in September.

(23) BY MR. GILHOOL:

Q. Mr. Paynter's child?

A. Yes.

Q. When you were in Delaware did you consider taking up a licensed practical nursing course?

A. I did, but, well, not in Wilmington but in the part where I was—see, I was down there at Milford Hospital, you know, down in Lincoln and Milton.

Well, down there if you are colored you can't—If I had took up nurse's aid I couldn't get a job as a nurse in Milford Hospital.

Q. Why is that?

A. Well, they just don't have any colored nurses in there. I mean I could get a job in the kitchen, you know, or cleaning up, but not as a nurse's aid. I would have to go to Wilmington.

Q. Did you have any relatives here in Philadelphia?

A. Yes, my father's brothers and sisters, they were all born and raised here. They are all here, and my mother's sisters and brothers.

Q. When did you apply for public assistance?

A. I think it was in February, about the 22nd, I think. I am not sure of the date.

Q. Between the time when you arrived in December and (24) February, how had you managed?

A. Well, my father, like I said before, he was helping us with the bills and stuff. He had paid the rent up until March 1st but he got laid off January 7th

Q. What support responsibilities does your father have for his own family?

A. He has a wife and six kids.

BY JUDGE KALODNER:

Q. Who has a wife and six kids?

A. My father.

BY MR. GILHOOL:

Q. You applied for public assistance late in February. Was it granted?

A. Yes.

Q. How many payments did you receive?

A. I received two checks.

Q. And in what amount was each payment?

A. $115.

Q. When was public assistance terminated?

JUDGE LORD: That is in the complaint.

MR. GILHOOL: Yes.

A. In March.

JUDGE KALODNER: You have an exhibit that sets that forth.

(25) MR. GILHOOL: Yes, sir.

MR. CASPER: That is admitted.

MR. GILHOOL: Right.

JUDGE KALODNER: That is admitted. It was terminated because of the failure to meet the eligibility requirements.

BY MR. GILHOOL:

Q. How have you managed since public assistance was terminated?

A. Travelers Aid has been helping me with my bills.

Q. And what amounts of money has Travelers Aid provided for the maintenance of yourself and the children?

A. Well, when Travelers Aid started helping me they said they could only help, you know, with the bills of the present time for the month.

BY JUDGE KALODNER:

Q. You were asked how much money they were giving you a week.

A. Well, I mean they pay my bills, like the rent.

BY MR. GILHOOL:

Q. Do they give you a weekly payment?

A. No.

Q. How do they pay you?

A. Like my rent is due the first of the month and she will (26) give me a check to pay, you know, half of it.

Q. Is that check sent to you through the mail?

A. No, I go there and get it.

Q. Where is the Travelers Aid office?

A. At 30th Street Station.

JUDGE KALODNER: How much is that check that she gets cashed?

BY MR. GILHOOL:

Q. How much is your rent?

A. My rent is $50 a month.

MR. GILHOOL: Your Honor, Travelers Aid assistance comes seriatim, ad hoc, so the rent would be a check for $50. $25 would be toward the rent.

BY JUDGE KALODNER:

Q. They give you $25 a month toward your rent. What else do they give you?

MR. GILHOOL: Food.

BY JUDGE KALODNER:

Q. What else?

A. I get food stamps and she gives me the $6 to go with the order for that and she is taking care of my electric and gas.

BY MR. GILHOOL:

Q. Has Travelers Aid covered all of your outstanding bills?

(27) A. No, because like I said they can only pay the part, where they were helping me. The past of the bills, it is up to me to pay that.

Q. You have some back bills?

A. Yes.

Q. What are they?

A. Well, my gas bill is—it was $81.

(28) BY JUDGE LORD:

Q. $81?

A. Yes.

Q. For how long?

A. Part from December.

Q. From December?

A. Yes.

Q. It is still a big gas bill.

A. We have gas heat.

Q. You have gas heat?

A. Yes, and the two houses on each side are empty.

BY MR. GILHOOL:

Q. That bill is still outstanding?

A. Yes.

Q. Have you had any other source of income since public assistance terminated besides Travelers Aid?

A. No.

Q. How long will Travelers Aid continue?

JUDGE KALODNER: Is she in a position to tell us that?

MR. GILHOOL: Yes, sir. I think so. She has been informed how long it will continue by Travelers Aid.

JUDGE KALODNER: She can tell us what she was (29) informed. They may well change their minds.

A. She said another week, another week.

Q. When did she tell you that?

A. When I saw her yesterday.

BY JUDGE LORD:

Q. When you saw her yesterday?

A. Yes.

JUDGE KALODNER: Do you have anyone here from Travelers Aid?

MR. GILHOOL: Yes, sir.

JUDGE KALODNER: All right.

MR. GILHOOL: I have no further questions. Mr. Casper?

Cross-Examination

BY MR. CASPER:

Q. Miss Smith, when your father was laid off from work and you found yourself with this monetary problem, what did you do?

A. Well, I didn't know what to do and I had to go by the school that day because my little boy needs glasses and the nurse had sent for me.

BY JUDGE LORD:

Q. Your boy what?

A. He needs glasses.

(30) Q. Yes.

A. And the nurse had sent for me, so she told me I had to take him to Jefferson, so I told her I had

been cut off from DPA and I didn't have no way to get any, so she sent me to the Anti-Poverty place, 23rd, Frankford and Allegheny, and they sent me to my lawyer, you know from the Travelers Aid.

BY MR. CASPER:

Q. If I may interrupt you, I don't think you quite understood my question, Miss Smith.

When there was first a problem you applied for public assistance and you got two payments; is that correct?

A. Yes.

JUDGE SHERIDAN: Excuse me one moment.

JUDGE KALODNER: I have difficulty hearing the witness. I have difficulty hearing you too for that matter. There is a whirr of this air-conditioning above here.

JUDGE LORD: Can we turn that off? I think if we turned it off in here it would turn it off in every other courtroom.

All right, let's try that.

JUDGE SHERIDAN: There is no excuse for a lawyer not being heard.

(31) BY JUDGE KALODNER:

Q. You want me to hear you, don't you?

A. Yes, sir.

BY MR. CASPER:

Q. My question was this, Miss Smith. You applied for public assistance and I understand you received two payments, two checks?

A. Yes.

Q. You were then told that this assistance would be discontinued?

BY JUDGE LORD:

Q. Is that right?

A. Yes.

JUDGE KALODNER: There is no doubt about it. There was a letter of March 28 from the Public Assistance Board notifying her, because she didn't meet the one-year residence eligibility requirement, that unemployment relief would be discontinued. There is no question about it.

MR. CASPER: Your Honor, my question is when confronted with that situation what did she do?

JUDGE KALODNER: Ask her that. Don't ask whether she received notice.

MR. CASPER: No, Your Honor. She misunderstood my question.

(32) BY JUDGE LORD:

Q. When you got that notice what did you do? When you knew you weren't going to get any more public assistance, what did you do?

A. I went up to the Anti-Poverty place at 23rd Frankford and Allegheny, to find out if I could get any help there. They sent me to my lawyer and I explained everything to him and he sent me to Travelers Aid.

BY JUDGE KALODNER:

Q. Who is your lawyer?

A. Mr. Gilhool.

JUDGE KALODNER: All right.

BY MR. CASPER:

Q. Tell me whether I am correct. Do I understand you correctly, that you are relying on Mr. Gilhool with respect to the question of what resources may be available to you?

A. Yes.

Q. You never went to the City Department of Public Welfare and consulted with them and their social workers?

A. Well, Miss Enty had already told me that I was cut off because of residence.

Q. That is not my question. The City Department of Welfare, not the County Board of Assistance, the Philadelphia City Department of Public Welfare and its social service program; (33) you have never been there?

It is very simple. If you don't know anything about them just tell me.

A. No, I don't.

MR. CASPER: Thank you very much. I have no further questions.

MR. GILHOOL: That's all, thank you.

(Witness excused.)

REBA HAIMOWITZ, sworn.

Direct Examination

BY MR. GILHOOL:

Q. Miss Haimowitz, what is your occupation?

A. I am a case worker at Travelers Aid Society of Philadelphia.

Q. How long have you been there?

A. I have been there two years now.

Q. What is the purpose of the agency?

A. Travelers Aid is set up primarily by Community Chest of Philadelphia to assist newcomers to the city.

Q. And how does it assist them?

A. Our assistance can be in the form of a brief period of financial assistance, but essentially we are concerned about the plans of the people; whether settling in the new community (34) is desirable as contrasted to their purpose for leaving the other community.

Q. Do you act as a referral agency as among other agenies in the city as well?

A. Many times.

Q. Have you had an association with Juanita Smith?

A. Yes.

Q. What has that association been?

A. Miss Smith was referred to us by the Anti-Poverty Program for assistance because of the discontinuance of her public assistance grant and we accepted her as a client.

Q. What assistance have you given Miss Smith and her family?

A. So far it has totalled about $174 in the time—

Q. That is over what period of time?

A. Since—

Q. Can you recollect what period of time?

JUDGE KALODNER: She is looking at her records.

A. Toward the end of March, about the 25th.

Q. What has this assistance been for?

A. The items primarily covered were transportation since there were clinic visits as well as to us, rent, food, supplementing the stamp program since that is not sufficient for the half-month period, clothing, laundry, soap, various household expenses.

(35) Q. What need or expenses have you not been able to assist with?

A. We do not cover back bills, essentially.

Q. What do you do with respect to medical matters?

A. We try to find a way of getting free medical care if it exists and if a person needs medical care and it is not free we will provide it. We will pay for it.

Q. How long will you continue assistance to Juanita Smith and her family?

A. Since we have gone pretty deeply into the plan, we feel we cannot continue longer than a week or so.

Q. Would you say why it is that you have reached that decision at this time?

A. At this point under the circumstances it would seem that a return to Delaware would be indicated.

Q. And why is that?

A. Because she cannot get assistance here and there is no other plan for maintenance here in the city.

Q. You are not prepared to continue to maintain her through the year?

A. We are not set up for that.

Q. Have you informed Miss Smith of this?

A. Yes.

Q. When did you do so?

(36) A. Yesterday, and also in my home visit last Thursday.

Q. Upon the termination of your assistance and in the absence of public assistance what resources to maintain Juanita Smith and her family are available?

A. Almost none. Her father evidently cannot or will not give any more, I don't know. Her mother cannot assist too much.

Q. Essentially the conclusion of your plan was that it is best she return to Delaware?

You said the understanding was that she could not receive assistance here?

A. Yes.

MR. GILHOOL: I have no further questions.

Cross-Examination

BY MR. CASPER:

Q. I am not sure I understood you. Is it correct that if Miss Smith were to return to Delaware she would be eligible for assistance there?

A. In Delaware she is a resident of Delaware.

Q. Let me ask you this. Have you explored other possibilities of plans that could be worked out if Miss Smith were to remain here, stay here in Pennsylvania?

A. Are you referring to the City Department of Welfare?

Q. That is only one possibility. I am asking you. You are (37) an expert in the field.

A. We are essentially the only agency set up for newcomers and nonresidents.

Q. Well, let's start with the city department. What did you explore?

A. That is primarily an institutional agency and Miss Smith is interested in keeping her family with her.

BY JUDGE LORD:

Q. What is an institutional agency?

A. The Department of Welfare; that is, it is primarily for placement.

Q. In foster homes?

A. Yes, not a method of enabling a mother to stay with her children.

JUDGE LORD: All right.

BY MR. CASPER:

Q. First of all, foster home care, that is not institutional?

A. Right.

Q. But foster home care isn't like an adoption, is it?

A. No.

Q. It may be a temporary matter?

A. Right.

Q. It may help somebody over some rough spots?

A. Yes.

(38) Q. So you can develop a plan?

A. Yes.

Q. And then the mother might get together with the children again?

A. Right.

Q. Did you discuss this case of Juanita Smith?

A. I considered it but I did not discuss it because the problem would still remain of free medical.

Q. What is the problem of medical care?

A. Not being a resident, not receiving assistance, she cannot be helped under the maternal and infant program.

BY JUDGE KALODNER:

Q. Whose program is that?

A. It is a federal program given to different hospitals here and—except it covers a specific area for each hospital.

Q. Does that also have a residence requirement?

A. No, but unfortunately she lives outside of that area of residence for Episcopal Hospital.

BY JUDGE LORD:

Q. Doesn't she live in that area?

A. She is ineligible for Temple and any other hospital and Frankford does not have a program.

BY MR. CASPER:

Q. I am sorry, I don't understand you. I am familiar with (39) the fact that the medical assistance program does not have a residence requirement.

I don't understand what you mean when you refer to this program operating at this or that hospital, that she is not within their residence area.

A. It is a federal program for maternal and infant care.

Q. I am familiar with it.

A. And that does go by certain neighborhoods and she—I have checked with the office at Broad and Pine, Broad and Lombard, wherever it is, and they said if she lives outside the area she is not eligible.

Episcopal Hospital will accept her only if she has lived in that area or can pay the—I think it is $19 for attending the clinic and then there would be another sum for the delivery.

Temple Hospital cannot accept her. Frankford Hospital has no funds for that program either.

BY JUDGE KALODNER:

Q. What is her problem? What medical care does she need?

A. She is pregnant and because of the numerous pregnancies she has developed terrible varicosities. Her veins are in very bad shape.

BY JUDGE LORD:

Q. Do you mean, you may be saying exactly this, but I would (40) like to be sure of it, that if some people in Philadelphia live in a given area there is no way that they can get free medical care?

A. This is primarily—certain type of care they cannot get. Any hospital will give free emergency care. They will not necessarily accept a nonresident for continued regular care.

Q. What do you mean by nonresident?

A. Anyone who has not been here a year.

JUDGE LORD: Oh, I see.

BY JUDGE KALODNER:

Q. So they do have a residence requirement?

A. Yes.

BY MR. CASPER:

Q. I would like to understand you. You are saying this is in fact the practice?

I mean I know the law and the law does not provide for this. It says absolutely no residence requirement.

A. Under the new program care has been easier to get but the giving of the program seems to vary from hospital to hospital.

BY JUDGE LORD:

Q. What I am interested in knowing is are you telling us that there are certain areas in the City of Philadelphia where (41) people living in those areas cannot get medical care that they need?

A. Yes, in our agency we have found several like that, but—that is, they cannot get continuing care. Emergency care they can always get. If it is something like a diagnosis of tuberculosis or something like that, there is no problem.

Q. I am talking about somebody that is pregnant and has varicosities.

A. Unless they live within the area of the hospital it may be not possible to get it.

BY JUDGE KALODNER:

Q. Not all hospitals have the program; is that it?

A. Yes, it has become easier with the grant and the new Pennsylvania medical care program.

MR. CASPER: I shall investigate these facts as soon as I get back.

BY MR. CASPER:

Q. Will you tell me this, please? Did you investigate the possibility of one of the other private agencies that are active in the field of maternal care, particularly in the case of unmarried mothers?

Did you investigate that possibility?

A. Ordinarily the agencies working with unmarried mothers— it is primarily around planning for the mother and the child (42) to be born rather than other children.

Q. This is true. Did you, however, consider it?

A. It was something I considered but I did not actually contact them.

Q. What I am asking you really is what possibilities did you explore in the public sector and in the private sector with respect to a plan that would tide Miss Smith over, as it were?

We are talking about what is for the purposes of argument here a temporary problem.

A. Yes.

Q. I am asking you the question: What possibilities did you explore in the public and in the private sector?

JUDGE SHERIDAN: Are you dealing only with respect to this pregnancy or this other thing. The other children have to be fed.

MR. CASPER: That is what I meant to include, Your Honor, for example when I referred to a possible temporary foster home program for the other children.

JUDGE SHERIDAN: You are going beyond the pregnancy now? Your question encompasses all the other children too?

MR. CASPER: Yes, Your Honor.

A. Do you mean a program until December when she will establish (43) residence?

Q. Yes.

A. The primary family care agencies that give financial assistance are agencies such as Salvation Army, the Episcopal Family Service, the Jewish Family Service. Most of them do not give long-time financial assistance.

Essentially we are the agency that they turn to in those situations.

Q. I understand that the practices vary. My question is specifically, did you in detail explore possibilities of tiding Miss Smith and her family over to next December in whatever way, with foster home care, with care for her situation, maternity care, with the public sector, the City Department of Public Welfare and the various private organizations of whom you know who may primarily not be concerned with the Miss Smiths?

Did you explore the possibility?

A. I did not contact the agencies because of our experience with them in other cases.

MR. CASPER: Thank you. I have no other questions.

(Witness excused.)

(44) JUDGE LORD: Anything else?

MR. GILHOOL: Your Honor, I have no further witnesses.

I think we have demonstrated that in the absence of assistance and with the termination of Travelers Aid plaintiff faces three choices, each of which necessarily would work to her irreparable harm.

One is to attempt, albeit against the hard facts of life, to maintain herself with her children at their present residence without any source of income.

The other is to place her children in foster care, and the third is to return to Delaware which, of course, is both contrary to her intent and her purpose and would forfeit the very rights that she is here claiming.

I think, Your Honor, we have established on the one hand that the harm to the plaintiff is extraordinary. On the other hand, Your Honors, we are talking here about assistance in the amount of $115 every two weeks.

This burden on the Commonwealth is certainly a negligible one. I am prepared, if Your Honors wish, to address the legal questions which are as I see them not only serious questions with respect to this statute, but as I see them now are sufficiently serious questions to require that that statute be struck down.

(45) JUDGE KALODNER: It is not enough for you to show that there will be irreparable injury and damage done if you don't receive the temporary injunction.

You must show some right to it, the basis for it.

MR. GILHOOL: Yes, sir.

JUDGE KALODNER: Tell us, by the way, what does the Anti-Poverty Program do; simply refer people to lawyers who refer them to other agencies?

Doesn't the Anti-Poverty Program do anything for people in need?

MR. GILHOOL: Yes, sir. It does quite a great deal for people in need. In Miss Smith's case it put her in touch with Travelers Aid.

JUDGE KALODNER: What about the lawyer who put her in touch with Travelers Aid?

MR. GILHOOL: Yes, sir, the lawyers work and have their offices with the other PAAC workers.

JUDGE KALODNER: Does it do anything else other than to refer them to counsel and various public charities?

MR. GILHOOL: Yes, sir.

JUDGE KALODNER: Or private charities?

MR. GILHOOL: Yes, sir. For example, on each (46) of the many occasions over the last five weeks Miss Smith has had to travel from Frankford to center city in order to receive assistance from Travelers Aid.

They have taken care of her children on each occasion when she has had to come into center city.

JUDGE KALODNER: In what way have they taken care of the children?

MR. GILHOOL: Babysitting.

JUDGE KALODNER: They provide babysitters. Do they provide any financial aid?

MR. GILHOOL: No, sir, they have no funds whatever—

JUDGE KALODNER: It seems to me Anti-Poverty Program is a misnomer.

JUDGE LORD: No, I think it is well named. It apparently has no money at all.

JUDGE KALODNER: Let me say that it seems to be impoverished in its administration and its functioning as well as the name.

MR. GILHOOL: No, sir. I am not here either to defend or to—

JUDGE LORD: Mr. Gilhool—

MR. GILHOOL: —act as protagonist for the Poverty Program. I am here for my client.

(47) JUDGE LORD: Excuse me.

MR. GILHOOL: Excuse me, sir. Go ahead.

JUDGE LORD: If the Anti-Poverty Program can act as a babysitter, couldn't it do that and perhaps Miss Smith could attempt to get a job?

MR. GILHOOL: A fine question, Your Honor. The Anti-Poverty Program as you suggested and as Judge Kalodner has suggested is not entirely the most fulsome program in the city. The office in Frankford—

JUDGE KALODNER: That is the understatement of the century. It is the most impoverished program in the city.

Let me suggest this to you; if hey paid for a babysitter why couldn't they pay her to sit for her children?

MR. GILHOOL: Your Honor, that question I think would have to be addressed to Congress and the Office of Economic Opportunity in Washington.

JUDGE KALODNER: If they paid somebody else to sit for the children why can't they pay for the mother of the children to sit?

MR. GILHOOL: Sir, it is not a question of—

JUDGE LORD: I don't know that they did.

JUDGE KALODNER: You say they paid for babysitters?

(48) MR. GILHOOL: No, sir. Staff members of the Anti-Poverty Action Council in Frankford have—

JUDGE KALODNER: They paid them?

MR. GILHOOL: Yes, sir. They paid two social aides who act in many capacities, among them referral capacities in the search for whatever might be required for the needs pressed upon the family who chances to be their client, and in the course of that they of course will do what is necessary to assist, to expedite, to make possible that assistance from third parties and so they will within the limits of their staff time babysit every couple of days.

JUDGE KALODNER: They are a booking agency. They book business for private agencies?

MR. GILHOOL: Yes, sir. Unfortunately, unlike a booking agency, they don't work on a commission.

JUDGE LORD: Well, Mr. Gilhool, I am interested in this.

You said that when Miss Smith had to go into town to see Travelers Aid—

MR. GILHOOL: Yes.

JUDGE LORD: —that the Anti-Poverty Program or whatever it is acted as a babysitter so that she—

MR. GILHOOL: One of their staff members did.

JUDGE LORD: One of their staff members did, (49) I understand.

MR. GILHOOL: Yes.

JUDGE LORD: Now, my question is, if they are set up to babysit why couldn't they babysit while Miss Smith got a job?

MR. GILHOOL: Your Honor, they are not set up to babysit 40 hours a week.

JUDGE LORD: I see. All right, that answers my question.

MR. GILHOOL: Judge Kalodner, I should like to respond to your question which I took as going to the legal basis of the claim here.

JUDGE KALODNER: You have to assert the legal right which will fall on the basis of our jurisdiction. We may be entirely sympathetic but nevertheless unless there is an assertion of a reasonable legal right, how can we act?

MR. GILHOOL: You have before you, Your Honor, a memorandum of law reviewing I think in sufficient detail to make it clear that not only is there a substantial constitutional question here—

JUDGE KALODNER: How is there a substantial question? You keep on saying there is a substantial question.

How?

You say that there is an interference under (50) the commerce clause.

MR. GILHOOL: Yes, sir.

JUDGE KALODNER: How?

MR. GILHOOL: Sir, if I may, let me start with argument No. 3 at page 14 of the memorandum.

MR. CASPER: May I interrupt, Your Honor?

May I have a copy of that?

JUDGE KALODNER: I have a copy of it here.

MR. GILHOOL: All citizens of the United States by virtue of the protections of liberty accorded by the Fifth and Fourteenth Amendments have the right to travel freely from state to state.

This proposition is at this date extraordinarily clear. At page 14, at the bottom of page 14, proceeding from Kent vs. Dulles to Aptheker vs. United States and United States vs. Guest, the court has, and in the latter particularly, unanimously made it very clear that there is a liberty freely to travel from state to state and that that liberty is, as in the words of Aptheker, the court, the majority in Aptheker, is a constitutional liberty of the order of First Amendment rights.

The Court is well aware of the proposition that First Amendment rights and any address of protected areas by the state require that that address be most narrow, most (51) precise, and most proper in attempting to achieve its legitimate purpose.

The United States Supreme Court in Sherbert vs. Verner, which is discussed, Your Honors, at page 14 of the brief, held in a case quite like this that a state may not condition the receipt of assistance benefit upon the surrender of a constitutional right. The

constitutional right in this case was freedom of religion.

JUDGE KALODNER: That was a case where the woman said she wouldn't go back to her job because it required Saturday work and that was in conflict with her religious belief, and the Court held the state could not refuse to pay the unemployment for that reason.

That is not the situation here.

MR. GILHOOL: Yes, sir. It is exactly the same situation.

JUDGE KALODNER: How?

MR. GILHOOL: Juanita Smith lived in this Commonwealth in 1959.

JUDGE KALODNER: She has been away from here for five years.

MR. GILHOOL: That's right, but in leaving she exercised her right freely to move from state to state, a liberty of the highest order.

(52) In so moving, now having exercised that right, the Commonwealth says to her in terms of this residence requirement that since you moved we will not grant you assistance.

JUDGE LORD: Now, let me ask you this then.

Suppose in the exercise of her right to travel she went from Philadelphia to Delaware and she said to Pennsylvania I want you to continue paying my public assistance and if you don't pay it simply be-

cause I moved out of Pennsylvania you are interfering with my right to travel.

MR. GILHOOL: Our claim here, sir, is not that the state must affirmatively support the right to travel. On the contrary, our claim only is that the state may not limit the right to travel.

It is a legitimate interest of the state, it seems to us, and perhaps this is the minimal test permissible, both under this section of the Constitution and under equal protection, that public assistance should be conditioned upon presence in the state and, of course, all those other criteria.

JUDGE SHERIDAN: Would your argument be any different if she had never lived in Pennsylvania?

MR. GILHOOL: No, sir. It would be a bit different but it would still go to liberty, sir.

We are dealing in this regulation with a right (53) that inhibits and deters the exercise of the liberty.

JUDGE KALODNER: Were you counsel in the Delaware case? The District Court has been designated to hear this question. Delaware has a similar one-year eligibility.

MR. GILHOOL: Exactly, and many of the states do, Your Honor.

JUDGE KALODNER: Were you in that case? If you weren't, I won't ask you a question.

MR. GILHOOL: No, sir. I am not in that case.

JUDGE KALODNER: All right, I wanted to ask whether in that case there is also a return of the native, so to speak.

MR. GILHOOL: I don't know, Your Honor. I dare say, however, the time for residence requirements at least in the judgment of the members on this side of the Bar has probably come for review. In addition to that case there is a case pending before a three-judge court in Hartford, Connecticut, presided over by Judge Smith. That Court denied a motion to dismiss.

As the Court is no doubt aware a state court in Utah did on January 27 issue a preliminary injunction in a case of exactly these circumstances.

JUDGE KALODNER: Why didn't you take this to the State Court, may I ask?

(54) You are attacking the constitutionality of the state law. Why didn't you test it in the State Court?

Isn't that the proper forum for testing the liberty or the constitutionality of a state act?

MR. GILHOOL: Your Honor, among the constitutional rights we are especially contesting here are rights that are inherently in the nature of federal rights.

JUDGE KALODNER: You say you are being barred from the exercise of the liberty to travel freely from state to state; that therefore that statute is unconstitutional.

Why don't you go to the State Court?

MR. GILHOOL: Because we preferred to raise this question of such considerable magnitude and relating to so many matters important in the Constitution in Federal Court, and we have that right.

JUDGE KALODNER: Aren't the State Courts competent to decide those questions?

MR. GILHOOL: Yes, but the choice, Your Honor, of forum on a constitutional matter rests with us.

This Court is a three-judge court and, as Your Honor knows, there are certain advantages procedurally and otherwise to being heard before you.

JUDGE KALODNER: I don't know that that is such an advantage.

(55) MR. GILHOOL: Your Honor, if this question, as I think it is, is a question of great importance not only to plaintiff but to seven million poor people in this country here now receiving public assistance and who, because of the multiplicity of residence requirements among the states, are essentially reduced to a status—are essentially prohibited from mobility. The poor must stay put.

JUDGE KALODNER: All right, give us your argument on the commerce point.

MR. GILHOOL: I have given you my argument on liberty.

JUDGE KALODNER: Are you familiar with the fact that the State of Pennsylvania and most states have a residence requirement before you can vote?

MR. GILHOOL: Yes, sir. I certainly am.

JUDGE KALODNER: Are those acts unconstitutional?

MR. GILHOOL: No, sir. I think not. Indeed, the Supreme Court has recently held that they are not.

JUDGE KALODNER: Exactly so. The City of Philadelphia specifies by its Charter that one cannot be employed by the City unless one is a resident of the City.

MR. GILHOOL: Your Honor, that is another matter. I think the same argument that applies here would probably apply to employment.

(56) With respect to the voting requirements I might note that on next Tuesday the voters of this state will act on a constitutional amendment that would lower that requirement to three months.

JUDGE KALODNER: But still it is a requirement.

MR. GILHOOL: Your Honor, in the Fourth Circuit case affirmed by the United States Supreme Court it was made very clear what legitimate interests the state had in the establishing of voting residence requirements for voting and chief among those was, as Your Honors will recall, a question of residence requirement for voting in federal elections, and chief among the reasons thought permissible by the Court to justify such a requirement was the interest of the state in assuring that in contemplation of the Electoral College and the summation of votes by state the state therefore had an interest in assuring that all those who voted and hence controlled how Maryland went in the Electoral College, had some acquaintance with the community, understood the problems of that community, understood the relation of the issues in that election to the community.

Now that justification is not present here.

JUDGE LORD: That one isn't, but do you say there is no legitimate state purpose whatsoever?

MR. GILHOOL: Yes, sir. I find it impossible (57) to discover any legitimate state purpose here.

JUDGE LORD: All right, I don't want to interrupt you in mid-flight.

MR. GILHOOL: The one purpose, Your Honor, that might be postulated, that might possibly be permissible, is referred to at page 6 of the memorandum, and that is the prevention of abuse of public assistance, this public assistance program by persons coming to Pennsylvania with no motive but to obtain assistance.

As I argued with respect to liberty, any regulation of liberty must be the narrowest consistent with the objective.

With respect to equal protection classifications that sweep with undue breadth, they are suspect indeed. They are invalid.

That purpose, if proper, is not served consistent with those strictures by this statute, for this statute excludes not only those who may come with a motive to secure welfare, and plaintiff did not come with that motive, but it excludes also those who may come for very good reasons, reasons that Mr. Justice Douglas talked about in concurring in Edwards vs. California; that is, the search for new horizons, for opportunity, for jobs, for education, for whatever, for what people generally move from place to (58) place in order to secure.

JUDGE LORD: True enough, but Edwards vs. California was a different case.

JUDGE KALODNER: That was entirely different.

MR. GILHOOL: Well, sir, in this case Pennsylvania has said to Juanita Smith that she may not come to Pennsylvania.

JUDGE KALODNER: It didn't say she may not come; it said if you come to Pennsylvania you must live here a year before we will grant you unemployment relief or mother's assistance.

MR. GILHOOL: The Commonwealth is, however, now, Your Honor, saying to Miss Smith that she must return to Delaware.

JUDGE LORD: No, they are not.

JUDGE KALODNER: They are not saying that to her. They are saying you can live here, because the letter says we are cutting you off because you failed to meet the one-year eligibility requirement.

It doesn't say you have got to go back to Delaware.

Miss Haimowitz said her agency thought she could go back to Delaware and receive relief there and that is why they won't help her, but that is not the Commonwealth's—

(59) The Commonwealth is not sending her back.

MR. GILHOOL: That is something like what South Carolina said in Sherbert vs. Verner and it is something like what the state said in Speiser vs. Ran-

dall; i.e., unless in the one case you surrender your freedom of religion we will not assist you.

JUDGE KALODNER: What freedom are they asking her to surrender?

MR. GILHOOL: They are asking that she surrender her liberty to move from place to place.

JUDGE KALODNER: That is utter nonsense, in my opinion.

JUDGE LORD: Let me ask you this question, Mr. Gilhool. Hypothesize with me for a moment, if you will.

A bum, a hobo, who travels from state to state, in the summertime he goes to Maine, in the wintertime he goes to Florida, and he passes through various states on his travels and he decides, well, I will stay in South Carolina for about a week and pick up a little public assistance; then I will move on to Georgia and I will stay there a week and I will pick up a little public assistance.

MR. GILHOOL: Your Honor, in that case if restricting the movement of that person were permissible and I argue that it is not permissible, in light of liberty (60) and in light of the commerce clause and privileges and immunities of the 14th and the 4th, but if it were permissible this statute is not sufficiently narrow to achieve that purpose.

JUDGE LORD: Excuse me. I didn't finish my question.

MR. GILHOOL: Yes.

JUDGE LORD: Which I will do.

Would you say that a state is constitutionally prohibited from saying that unless you are in the state two weeks we won't give you any public assistance?

MR. GILHOOL: Yes, I would, Your Honor. The state can't do that. Yes, that's right.

JUDGE KALODNER: Can or cannot?

MR. GILHOOL: Cannot.

JUDGE KALODNER: Well, you are consistent.

In other words, the hobo coming into Pennsylvania has the right to receive assistance?

MR. GILHOOL: Yes, sir.

JUDGE LORD: In other words, the state can provide no reasonable regulation whatsoever.

MR. GILHOOL: The state can, Your Honor, provide—

JUDGE KALODNER: Answer our question.

(61) Can the hobo come into Pennsylvania and receive assistance?

MR. GILHOOL: Yes, sir.

JUDGE LORD: In other words you say there is—is the right to be a hobo, a First Amendment right or a commerce clause right?

MR. GILHOOL: No, sir. The right of a hobo to move across state lines is a right of First Amendment stature. It is a right of national citizenship. It is a right that is essential to the constitutional commitment to one nation.

JUDGE LORD: And a state must not interfere with that?

MR. GILHOOL: Sir, it might in the presence of extraordinary necessity interfere with such a right. That standard is the standard that has been applied in the cases cited in argument B of the brief. Those cases deal with the right to travel freely from state to state as based on the rights of national citizenship and is derived from our federalism.

In those cases it is clear that the state can act only in the presence of extraordinary necessity. We are not dealing with any such necessity here.

The purpose of the state in enacting this qualification can in no sense be regarded as one of extra-
(62) ordinary necessity. Edwards and California makes that very clear.

In Edwards and California indeed we were dealing in a historic period when, not in numbers I dare say and not in severity by any contrast with the rest of society, when the country was still recovering and still largely in a depression, and when the question of interstate migration was particularly acute, and when as the Court in Edwards stated the burdens imposed upon a state by the movement of indigents into that state in financial terms might well be worth, they said staggering, nonetheless, the Court held that it was not permissible for a state to attempt to close its boundaries solely to protect its purse.

JUDGE KALODNER: The Supreme Court declared that that law was unconstitutional.

MR. GILHOOL: Your Honor, this statute has inevitably an exclusionary effect. It has such an exclusionary effect, Your Honor, as to—

JUDGE KALODNER: By the way, by the same token this lady, if she came to Philadelphia, couldn't get a job because she is not a resident of Philadelphia. Therefore she would be excluded in exercising certain rights, the right to make a living.

MR. GILHOOL: The statute, however, sir, has (63) not guaranteed by the state to anyone the right to make a living. It has, however, by statute established for the needy the benefit about which we are quarreling here.

JUDGE KALODNER: We get your point, I think.

MR. GILHOOL: With respect to the question you asked as to whether there is in fact an exclusionary effect, Toomer versus Witsell, referred to on page 5 of this brief and which is discussed somewhat more extensively at page 12 of this brief, involved a discrimination in state statute imposing license fees on commercial fishing between residents and nonresidents.

The differentiation there, sir, was something in the order of $250. The Court held that this differentiation had an effect so great that it was exclusionary.

JUDGE KALODNER: Do you think that situation is analogous to the situation here?

MR. GILHOOL: Yes, sir. I certainly do think it is.

JUDGE KALODNER: That is a difference of opinion. That is what they say makes horse races.

MR. GILHOOL: We are dealing here, sir, with a plaintiff who because of her prior citizenship in Delaware is being discriminated against by the Commonwealth of Pennsylvania.

(64) JUDGE KALODNER: All right.

JUDGE SHERIDAN: I want to ask you one particular question.

Is this father, as I recall the law, still liable for the support of his daughter, Miss Smith?

MR. GILHOOL: Yes, sir. He is in the law liable for their support.

JUDGE SHERIDAN: You haven't exhausted that.

MR. GILHOOL: As Your Honor knows, liability at law for support is quite a different thing from the reality of support.

JUDGE SHERIDAN: We can't assume that.

MR. GILHOOL: The plaintiff here testified, Your Honor, that in previous support actions against two of the gentlemen in question—

JUDGE SHERIDAN: Excuse me. I am talking about her own father.

MR. GILHOOL: Her own father, Your Honor? Plaintiff here testified that he has six children of his own.

JUDGE SHERIDAN: That is correct.

MR. GILHOOL: And a second wife. Her own father, Your Honor, plaintiff testified, lost his job in January. Either of those circumstances and each of them, Your Honor, would preclude under the law of the Commonwealth of (65) Pennsylvania any support from him.

JUDGE SHERIDAN: That would preclude it? I wouldn't know that.

MR. GILHOOL: Yes, sir.

JUDGE SHERIDAN: He may very well be able to support her or take her in.

JUDGE KALODNER: Anything else?

MR. GILHOOL: That's all from my side.

I thank you, Your Honor.

JUDGE KALODNER: All right, Mr. Casper.

I understand you haven't seen the brief but you were put on notice, as it were.

Do you have anything to say now?

MR. CASPER: I would like to say this, Your Honor. I don't think I could distinguish the Edwards case any better than the Court could, so I won't say anything more about that.

JUDGE LORD: That is the safest way.

JUDGE KALODNER: By the way, has there ever been an attack made on the constitutionality of this provision in Pennsylvania?

MR. CASPER: No, Your Honor.

JUDGE KALODNER: It has been in effect for 30 years now.

(66) MR. CASPER: Yes. I do want to say this, starting at the end, the legal point of view.

Obviously plaintiffs are trying something new. There isn't any authority they can rely on and I want to say this.

This is not a situation where the Commonwealth says to anybody keep out of Pennsylvania. It is merely a regulation of a grant system and Mr. Gilhool has said time and time again he doesn't say there is a constitutional right to public assistance. The exclusionary effect that he talks about won't be any different on anybody outside of Pennsylvania if Pennsylvania had no public assistance at all.

He says there is no such right, so if you are going to be logical about that the exclusionary effect is not something that is specifically traceable to this one year's residence requirement. That is first.

Secondly, it is sort of strange to talk in one sense about the exclusionary effect. The plaintiff in all the cases that we have are people who haven't been excluded. I didn't ask Miss Smith in the context whether she knew anything about the Pennsylvania Public Assistance Law before she ever came here, but there has been a study, Your Honor, I don't want to testify here, but it seems highly unlikely that decisions to move about, whether it is by the hypothetical hobo (67) or by somebody who is in search of a better life and usually sets his sights way above the dole. It is not one of those things as if people sit down and

calculatedly make determinations in terms of durational residence requirements of public assistance.

Residence requirements with respect to all sorts and kinds of state regulations have been not only known for years, they are current today. I happen to be a lawyer. If I want to go to Florida because I like the sun I can go to Florida, it is my constitutional right, but I can't practice law, not for ten years. It is part of their law. That one hasn't been challenged yet as far as I know.

Now, I am affected by that and there are any number of other residence requirements; not only the voting one but with respect to all sorts of facilities made available by states through their economy. Because of the limited resources that this particular state has in its economy it has a first and primary duty to its residents.

I don't want to say any more about the legal part of it but I do want to say on the question of irreparable injury it is interesting to note in this case that first of all I suggest plaintiff has not made out a case of irreparable injury. He has not suggested that Miss Smith will starve. I don't think she will starve in this particular situation and (68) please don't understand me in the wrong way. I do understand that there are from a humane point of view very serious problems of poverty involved and I don't want to make light of them.

I am just saying in the legal setting I don't think plaintiff has made out a case of irreparable injury.

First of all, you may recall in my cross-examination I had very grave doubts as to whether the potentials for help in this situation really have been properly exhausted. I asked that of both Miss Smith and the lady from Travelers Aid, whether there had been a detailed contact with the City Department of Public Welfare who, after all, have a responsibility in this matter under the County Institution District Law. The City Department of Public Welfare is in Philadelphia the County Institution District and I have not been told of any efforts made, of any plans looked at.

Now, we do know about a different program, a foster care program which, incidentally, is paid for at more than the public assistance rate but if you take all these things into consideration, these are all possibilities and they haven't been explored yet. How can we meaningfully talk about irreparable injury? That is one.

Two, as Your Honors know, there is even in Pennsylvania, never mind about Utah and Connecticut and (69) Delaware, another case raising the same questions in a different district and that is Leila Waggoner in Pittsburgh.

Now, what is the difference? The difference is that in this case Miss Smith came from Delaware and the County Board of Assistance thought when she applied there was a reciprocity agreement between Pennsylvania and Delaware in force, and gave her two checks. They found they made a mistake.

JUDGE KALODNER: In this case?

MR. CASPER: Yes, in this case. In the Waggoner case Mrs. Waggoner applied for assistance and there was no question of any reciprocity agreement from California, and they immediately said you haven't been here one year, you are not eligible.

Now, Your Honors, you have got the same constitutional issue involved. Would it in any sense be fair to say that because the County Board of Assistance made a mistake to the extent of two payments—

JUDGE KALODNER: No one is arguing that here.

MR. CASPER: I beg pardon, let me finish, to say that to enjoin the County Board from discontinuing assistance which they paid—

JUDGE LORD: If we do it we will do it a little differently. We will enjoin them from refusing to pay.

(70) MR. CASPER: I understand, Your Honor. I am not going to say any more about that.

JUDGE SHERIDAN: Do I understand that if these children went into a foster home, in December then she could get assistance?

MR. CASPER: If she is then financially eligible, yes, Your Honor.

That is all I have, Your Honor.

JUDGE LORD: We will take it under advisement.

(Adjournment)

In the United States District Court for the Eastern District of Pennsylvania

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(Title Omitted in Printing)

VII.

CONTINUED HEARING SUR PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

May 29, 1967

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(73) JUDGE LORD: Smith against Reynolds et al.

MR. GILHOOL: May it please the Court, I have a motion for determination by this Court that a class action may be maintained.

JUDGE KALODNER: Why do you need it?

MR. GILHOOL: Strictly speaking I suppose I don't need the motion.

JUDGE KALODNER: Then why are you doing something you don't have to do?

JUDGE LORD: I think he does.

MR. GILHOOL: Sir, it was suggested by the Court that it might be appropriate, and I have it with a draft order for Your Honor's contemplation.

The Health and Welfare Council by its counsel, Frederic Ballard and Matthew Strickler, have authorized me to say to the Court that they have authorized a petition for leave to appear amicus curiae and will, with the Court's permission, have a brief this week.

I have, Your Honor, three, perhaps four witnesses this morning and I should like—

JUDGE KALODNER: Everybody might as well file. We will have a free-for-all.

MR. GILHOOL: Yes, sir. This is a matter that concerns a great many people and a great many people are (74) interested in addressing the Court on the matter.

If I may I will proceed with my first witness.

JUDGE LORD: Yes, go ahead.

MR. GILHOOL: Miss Deborah Davis, please.

MR. CASPER: If I may, Your Honors, I would like to know if I may what Mr. Gilhool is seeking to prove by putting on this testimony today.

JUDGE LORD: Are you asking for an offer of proof?

MR. CASPER: Yes, sir.

JUDGE LORD: We can probably do it just as quickly by the witness, since there is no jury present.

MR. GILHOOL: Your Honor, very shortly, Miss Davis is the Director of the Bureau of Assistance

Policies and Standards, Office of Public Assistance, and as such has particular responsibility for the administration and oversight of the operation of the residence requirements.

It is the administration and operation of that requirement that she will testify to.

DEBORAH DAVIS, sworn.

Direct Examination

MR. CASPER: Your Honor if I might I still (75) I don't know how this will be relevant to the issue.

JUDGE KALODNER: Keep your voice up.

MR. CASPER: Your Honors, I still don't know how Miss Davis' evidence will be relevant. It appears we are here on a question of law.

JUDGE KALODNER: Did you move to dismiss? I can't recall anything of record.

Did you move to dismiss?

MR. CASPER: No, I believe I did state though, Your Honors, that apart from the fact that we put in question with respect to the complaint I believe we did say in the answer, we didn't make a separate motion to dismiss, but I believe it is perfectly all right to state as we did in our pleadings, in our answer, that there is no cause for which relief can be granted.

JUDGE LORD: That may be, that you alleged that, but we have nothing before us on which to act with respect to a motion to dismiss.

MR. CASPER: No, Your Honor. I understand that.

I merely would like, since we have had a hearing and know what the case is about, and the question is the constitutionality of the residence requirement, I don't want to be carping about it, but I just would like to know (76) what the relevance of the proposed testimony is to the issue that is before the Court.

JUDGE KALODNER: I can't understand the Attorney General's office in this respect. It seems as if the right hand doesn't know what the left hand is doing.

In the case of Leila Waggoner in the Middle District of Pennsylvania in which a constitutional court has been appointed, in that case they have moved to dismiss the complaint and for summary judgment. In this case they haven't.

MR. CASPER: No, there is an explanation for that, Your Honor. If I may say so, I thought that the same thing was accomplished since the Waggoner case was the first one, and I think we would go along, in Pennsylvania.

JUDGE KALODNER: What difference does that make, whether it is the first or not?

If you agree that a motion to dismiss should be filed, why wasn't it filed in both cases?

MR. CASPER: It is my understanding we would not file a motion to dismiss or, in the alternative, for summary judgment, until we were faced with the question of having had at least one hearing in this case

and whether we could arrive at a situation of quick disposition.

JUDGE KALODNER: Without having moved here for it?

(77) MR. CASPER: I believe we have done this, in effect, by our allegation in our answer which I believe is the same as a motion to dismiss.

JUDGE LORD: It certainly is not.

JUDGE KALODNER: I don't know whether—how you can say that, whether in state practice or Federal practice, that the denial of the cause of action in an answer is equivalent to a motion to dismiss, or for summary judgment.

MR. CASPER: Only on the ground, Your Honors, that some of the matters that had been alleged as a basis for your motion to dismiss, you can instead put into an answer.

JUDGE KALODNER: What?

MR. CASPER: You can put into an answer the same allegation.

JUDGE KALODNER: I don't think that is a valid answer.

MR. CASPER: Very good.

JUDGE LORD: Go ahead, Mr. Gilhool.

MR. GILHOOL: Thank you, Your Honor.

BY MR. GILHOOL:

Q. Miss Davis, what is your occupation?

A. I am Director of the Bureau of Assistance Policies and Standards in the Office of Public Assistance.

Q. How long have you held that position?

(78) BY JUDGE KALODNER:

Q. That is in the Commonwealth of Pennsylvania?

A. The Commonwealth of Pennsylvania. I have held the position since 1958.

BY MR. GILHOOL:

Q. What previous positions have you held?

JUDGE KALODNER: What difference does that make? Really and truly, what difference does it make here?

MR. GILHOOL: Your Honor, I want to indicate—

JUDGE KALODNER: This lady has been there since 1938. That is almost 30 years.

MR. GILHOOL: Your Honor, '58.

JUDGE KALODNER: '58? What is the difference? She has had nine years.

MR. GILHOOL: Your Honor, her previous positions with public assistance will indicate the range of her experience with public assistance and the matter before the Court.

THE WITNESS: I have been employed by the Department for 32 years. I have worked in various positions of responsibility.

BY MR. GILHOOL:

Q. Would you indicate what those positions have been?

A. Since 1944 I have been in the State Office, Harrisburg (79) office, and I have held positions as a field representative, as an assistant to the Director of Field Service, and as a policy specialist.

Q. And you have also served as a supervisor and as a case worker, have you not?

A. In the County I served as a case worker and supervisor, yes.

Q. What are the duties of the Bureau of Policies and Standards?

A. The duties of the Bureau are primarily the development of policies and procedures in accordance with the law and Federal requirements. We have additional duties, one of which is the analysis of complaints, appeals that come to the office from all sources, including representatives, clients themselves. We also have responsibility for interpreting policy and it is in this responsibility we deal with the counties and with the field staff.

Q. What are the duties of the Bureau with respect to the residence requirement?

A. The duties—

BY JUDGE LORD:

Q. Miss Davis, are you reading from something?

A. No.

(80) Q. I didn't think you were and therefore would it be convenient for you to keep your head up, because you are dropping it below the level of the Bench and that is cutting off the flow of sound.

A. I will pull myself up here.

JUDGE LORD: Yes.

JUDGE KALODNER: Read the question.

(The following read by the reporter:)

"Q. What are the duties of the Bureau with respect to the residence requirement?"

THE WITNESS: In respect to residence we have developed the regulations in accordance with the Pennsylvania State Law and our responsibility there extends to getting reciprocal agreements as provided by law with other states.

BY MR. GILHOOL:

Q. How many applicants in calendar 1966 were rejected because of the residence requirement?

A. 1520 families and 2—

JUDGE KALODNER: 15—

A. (Continuing) 1520 families and 2,967 persons.

Q. Do you anticipate that a similar number will be rejected in this year and in the following year?

A. Yes, there has been very little change in the number over the years.

(81) Q. What are the characteristics of the rejected applicants?

A. The Department does not keep characteristics—

JUDGE KALODNER: Pardon me.

BY JUDGE KALODNER:

Q. Does this residence requirement extend to all phases of public assistance?

A. Yes.

Q. Blind, pensions?

A. It extends to all phases except medical assistance. The medical assistance program which went into effect in 1966, January 1, by Federal prohibition does not carry a durational residence requirement.

Q. But blind, pensions for the aged?

A. Yes, all the other categories that are assisted are subject to one year, yes.

BY MR. GILHOOL:

Q. The medical assistance program you speak of provides in-hospital care?

A. Yes, it provides in-patient hospital care, visiting nurses' services.

Q. Fine.

A. Post-hospital nursing.

BY JUDGE KALODNER:

Q. There is nothing in the legislation with reference to (82) that? There is no residence requirement as to that, is there?

A. No, we are specifically prohibited from having one by Federal law.

Q. So there is no legislative mandate with respect to medical assistance, as to the period of residence in the state?

A. No, no.

JUDGE KALODNER: All right.

BY MR. GILHOOL:

Q. What are the characteristics of the applicants rejected on the grounds of residence requirement?

A. Well, as I say, the Department itself does not keep records of the characteristics of people who are rejected on account of residence.

However, in 1959 Dr. Artigues of the Pennsylvania —University of Pennsylvania made a study in which I assisted and the findings I think remain valid, at least from the analysis that we are able to make from correspondence, and from that the figures that he

arrived at were 40 percent previously lived in Pennsylvania, 60 percent have relatives here, 64 percent came to get jobs and 37 percent had jobs when they came. 7 percent came because of health reasons.

Q. Do you have any sense of the stability of residence in the previous state of these applicants?

A. Yes, again from Dr. Artigues' study 50 percent lived (83) in the state from which they came over five years; less than 1/10 had less than a year's residence in the other state.

Q. Do you have any sense of the numbers of rejected applicants who had been recipients of public assistance in the state from which they came?

A. Only 10 percent had received public assistance in the states from which they came.

Q. Characteristically how long have the rejected applicants lived in Pennsylvania before they applied for public assistance?

A. One half have lived here six months before they apply for assistance from this state and two thirds had two or more months residence.

Q. Will you describe the characteristics of some of the rejected applicants that have come to your official attention in the last couple of weeks?

A. We have a number of case situations. For example, here is a woman 80 years old. She came to Pennsylvania to live with her son who died a few months later, leaving nothing. She applied for assistance. She was found ineligible—

BY JUDGE KALODNER:

Q. Old age assistance?

A. Yes, 80 years old.

Q. Yes?

A. Here is a man of middle age. He had been born and raised (84) in Pennsylvania but ran a business in another state.

His son was inducted into the Army last summer and sent to Vietnam. The man went to visit a married daughter in Israel. He was taken very ill.

He returned to Pennsylvania last fall and had three operations, for which he received medical assistance. He is now living with his mother and father, whose only income is Social Security. He has no insurance or income and cannot work.

The son, who is on emergency leave from Vietnam, made application for public assistance for his father's period of recuperation.

BY MR. GILHOOL:

Q. And the application was accepted?

A. The application would be rejected because he doesn't have residence in—

JUDGE KALODNER: What is the point of this examination? Undoubtedly hundreds of people are denied all forms of public assistance in Pennsylvania because they are unable to satisfy the statutory one-year residence requirement.

That is not disputed.

MR. GILHOOL: Yes, Your Honor. That is so.

JUDGE KALODNER: In other words, the Department of Public Assistance is giving effect to the legislative (85) mandate.

What is the purpose of this examination?

MR. GILHOOL: The purpose, Your Honor, is this. We are here challenging a statute of the Commonwealth of Pennsylvania. We think it important, therefore—

JUDGE KALODNER: It imposes a hardship on those who are unable to receive any and all forms of public assistance, because of the one-year residence requirement.

MR. GILHOOL: Yes, Your Honor.

JUDGE KALODNER: Is there any question about it?

MR. GILHOOL: No question whatever.

JUDGE KALODNER: All right, why do you need to offer proof?

MR. GILHOOL: We think it important, Your Honor, that the record should indicate with some precision exactly the characteristics of those who come under this requirement.

We think that germane, Your Honor, to a judgment here.

JUDGE KALODNER: We have two instances. You are piling up instances of cases.

Now, what useful purpose does that serve?

MR. GILHOOL: Your Honor—

JUDGE KALODNER: All these hardship cases are very moving.

(86) MR. GILHOOL: Simply, Your Honor, it makes a full record which I think important to the determination of this case.

JUDGE KALODNER: You can keep this up for a year. Do you think that would have any real value, by piling up the record?

MR. GILHOOL: Your Honor, Miss Davis has testified—

JUDGE KALODNER: I don't think that the Commonwealth could possibly contend that the one-year residence requirement does not result in hardship to those people who are denied assistance by reason of the one-year statutory requirement, or residence.

MR. GILHOOL: Yes, Your Honor.

JUDGE KALODNER: If they did deny it, of course, they would cite such a denial.

MR. GILHOOL: Your Honor, Miss Davis has testified as to some of those cases rejected here in Pennsylvania.

I should like her to go on and testify as to those on public assistance in other states who had previously resided here, whose applications have been rejected.

The significance of that testimony, Your Honor, is precisely the fact that those applicants for public assistance must come back to Pennsylvania or should have stayed (87) in Pennsylvania if they were to receive any income at all. That, Your Honor, goes—

JUDGE KALODNER: Because of migration? Because of migration people failing to meet the residence requirements from the state where they come, then they come back to Pennsylvania, they are unable to satisfy the residence requirement?

Is there any question about that?

MR. GILHOOL: Well, Your Honor, one of the questions in this case is whether the residence requirement does in fact bind recipients of public assistance into the state where they are receiving public assistance, and effectively prevent their mobility to other states.

Now, the testimony that I would like Miss Davis to proceed to goes to that question.

JUDGE KALODNER: You don't need any proof of that, do you?

MR. GILHOOL: If Your Honor thinks not I am very pleased to agree. I thought that was in dispute the last time we were before the Court.

JUDGE LORD: Mr. Gilhool, it seems to me, and I am speaking now only for myself and not for the Court, that the real question here involved is whether or not a state can impose a reasonable residence requirement, No. 1; that is, (88) whether it can constitutionally impose a reasonable residence requirement.

MR. GILHOOL: Yes, sir.

JUDGE LORD: And secondly, if it can, whether the one year is a reasonable residence requirement in this case.

MR. GILHOOL: Yes, sir.

JUDGE LORD: I have no idea of whether I speak for the Court or not, but I am merely voicing my own feeling.

MR. GILHOOL: Yes, sir. I would pose the questions exactly that way.

JUDGE KALODNER: What evidence do you have on that score?

MR. GILHOOL: The testimony to date, Your Honor, has indicated the rejected applicants share, with other needy residents of Pennsylvania, certain characteristics.

That certainly goes to the question of whether this is an arbitrary classification or—

JUDGE KALODNER: Nobody has argued the question of discrimination against this particular party or plaintiff in this case. That hasn't been raised.

MR. GILHOOL: Your Honor, I am—

JUDGE KALODNER: You are not charging discrimination against your plaintiff, are you?

MR. GILHOOL: Yes, sir. We are.

(89) JUDGE KALODNER: As a class?

MR. GILHOOL: As a class, yes, sir, proceeding from the face of the legislation.

JUDGE KALODNER: The point is the legislation is universally given effect in Pennsylvania.

BY JUDGE KALODNER:

Q. I would like to ask you one question. How many states, do you know—

JUDGE KALODNER: The Commonwealth has failed to offer any evidence. I have got to ask the witness.

The Commonwealth has failed to tell us in any of its pleadings, anywhere, any time.

BY JUDGE KALODNER:

Q. How many states have a residence requirement, whether it is a month or five years?

A. 44 states have.

Q. Pardon me?

A. 44.

Q. How many states have public assistance?

A. Oh, all states have public assistance.

Q. 44 have a limitation, residence limitation?

A. Yes.

Q. Can you tell us what those periods range, the range of those periods?

(90) A. They range from five years—I have all the residence requirements listed here as taken from the APWA Directory.

MR. GILHOOL: Your Honor, we should be pleased to present to the Court a copy of that record.

BY JUDGE KALODNER:

Q. Let the witness answer.

A. Arizona, five out of the last nine years for old age assistance; five out of the last nine years for blind; one year for ADC.

Q. Just what do you mean, five out of nine?

A. Five consecutive years out of—or five years out of the last nine. It can be any five within those nine years.

Q. They must have lived for a period of five years out of the last nine?

A. Right.

Q. This would take into account those who would move out and come back in?

A. Yes.

Q. All right, I just wanted to make it clear. Now, the other six states don't have any public assistance program, or do you have—

A. Oh, no. They have.

Q. Without residence requirements?

A. Oh, no. They have public assistance programs. Public (91) assistance is a national program.

JUDGE LORD: But no residence—

BY JUDGE KALODNER:

Q. I know, the Federal Government has one.

A. The states in order to get Federal money have to have a public assistance program.

Q. Are there any states in the union that don't have a public assistance program?

A. No.

Q. You spoke of 44.

A. Six have no residence requirement.

Q. There must be six states that have no residence requirement?

A. That's right.

Q. All right, what are they?

A. Rhode Island is one; New York, Kentucky, Hawaii.

BY MR. GILHOOL:

Q. Those states have no residence requirements?

JUDGE KALODNER: Let her finish, please. She is giving us the names of six.

She has given us four.

THE WITNESS: I gave you five, didn't I?

JUDGE LORD: Four.

(92) BY JUDGE KALODNER:

Q. Rhode Island, New York, Kentucky, Hawaii.

A. My mathematics are wrong. We had 46.

MR. GILHOOL: Your Honor, if I may, the 44 states—

THE WITNESS: 46 states.

MR. GILHOOL: —have residence requirements.

THE WITNESS: Right.

MR. GILHOOL: Fine. In fact, Your Honor, of those 46 three have residence requirements generally but not for aid to families for dependent children.

The District of Columbia has a residence requirement generally as well and there are four, as the record shows, that have no residence requirements whatsoever.

If I might leave the line I was pursuing, entirely satisfied with Your Honors' indication of the irrelevancy of the testimony to the facts that are undoubtedly clear, I might proceed.

BY MR. GILHOOL:

Q. Miss Davis, if the residence requirements were eliminated what would be the cost?

A. The cost would be $1,637,500 in state funds.

Q. And in Federal funds?

A. $1,400,000 in Federal funds, or a total of $3,037,500.

(93) BY JUDGE KALODNER:

Q. How do you arrive at that?

A. This is based on an estimate of the number of families who would apply for assistance as a result of dropping the residence requirement.

Q. How do you arrive at that, based upon what experience?

A. Well, what our research people did was multiply the number of rejected applicants on an average in a year and that comes out to—by three. They figured there would be three times the number of people applying.

BY MR. GILHOOL:

Q. And on what basis did they choose that factor?

A. On their experience with the other states, from other states that relatively few people apply for assistance or come to another state for assistance purposes.

Q. In other words, you contemplate no great influx of indigent poor because of the elimination of the residence requirement?

A. Right.

Q. Is this based on the experience in New York, Rhode Island, Kentucky and Hawaii?

A. This is based on the experience of New York and Rhode Island.

Q. With other changes in regulations have your projections (94) of additonal cost proved accurate?

A. Our projections of cost have proven exceptionally accurate.

Q. What is the present total public assistance budget of the Commonwealth of Pennsylvania?

A. The total budget is $336,557,000. That is for the fiscal year ending in June 30th.

Q. How is the public assistance budget formulated?

A. The public assistance budget is based on estimates of economic conditions, the number of people who will be affected by it during the year's period, and that about does it.

Q. Would the elimination of the residence requirements at all complicate the budgetary process?

A. Not for the number of people involved. We based our estimates on 362,000 people, so 1500 more or less isn't going to substantially affect that.

BY JUDGE KALODNER:

Q. How many people are receiving public assistance in Pennsylvania? How many cases do you have now of all facets other than medical assistance?

A. Other than medical assistance it is about 347,000 right now.

Q. So we may have it for the record, what categories are they, without a breakdown?

(95) BY MR. GILHOOL:

Q. What are the categories?

A. Old age assistance, aid to permanently and totally disabled, aid to families with dependent children. That is called ADC.

BY JUDGE KALODNER:

Q. That is generally called Widows' and Mothers' Assistance?

A. Yes, blind pension.

Q. And unemployed?

A. And general assistance.

Q. Those five categories?

A. Right.

BY MR. GILHOOL:

Q. Given the residence requirement, what administrative burden is imposed on the public assistance program by it?

A. In the policy that denies assistance to people it creates administrative problems in trying to search out other resources, in trying to get the kind of help that people need.

In connection with residence much of the problem goes right from the case worker up the line of administration. That is why I am loaded here with case examples, because we get them in the Harrisburg office.

BY JUDGE KALODNER:

Q. In view of the experience you have just recited to us, (96) having been with the Department of Public Assistance a number of years, the last eight or nine years in the important office you occupy, has there

been any representation made to the Legislature with reference to the elimination of the one-year residence requirement by the Department of Public Assistance?

A. Yes, there has. We have proposed a change in the residence requirement on a number of times but the latest one is a proposal of one out of five years.

Q. Is what?

A. The person have a one year's residence out of five years.

Q. And what happened to that proposal?

A. It was turned down by the Legislature. It is being reintroduced this year, I understand.

BY JUDGE SHERIDAN:

Q. Why hasn't the Department proposed the complete elimination of all residence requirements instead of coming to one of five?

There must be a reason.

A. There is a lot of feeling I think about assistance to persons who haven't been residents of Pennsylvania and a fear that it will greatly increase costs, which you can't counteract by estimates.

Q. How would it increase cost? I think your testimony has (97) been the opposite, hasn't it?

A. Yes, I know, but I am talking about the public opinion.

Q. My question is directed to the Department, not the public.

A. Well, this is why the Department doesn't get its proposals enacted by the Legislature, because there is a pool of opinion that the residence requirements result in an influx of people into the Commonwealth.

BY JUDGE KALODNER:

Q. In other words we can take from that that the Legislature hasn't agreed with the estimate made by the Department of Public Assistance as to the impact of a modification or total elimination of the residence requirements; is that a correct statement?

A. Right.

BY MR. GILHOOL:

Q. Has the experience of New York, Rhode Island, Hawaii and Kentucky been called to the Legislature's attention?

A. The experience hasn't actually—

BY JUDGE SHERIDAN:

Q. What?

A. The experience hasn't proved that there is an influx of people in to receive assistance. However, it hasn't relieved the sentiment, the feeling, even in New York.

(98) BY JUDGE KALODNER:

Q. That wasn't the question asked of you. The question asked of you by Mr. Gilhool is whether or not the attention of the Legislature was called by the Department of Public Assistance or some other agency or some other person or individual to the experience of New York and Rhode Island?

JUDGE KALODNER: Is that your question?

MR. GILHOOL: Yes, sir.

BY JUDGE KALODNER:

Q. Would you answer that? In other words, was the Legislature told about the experience of New York

and Rhode Island; to wit, that it did not increase and result in any great increase?

A. Yes.

Q. Of the case load?

A. Yes, the Legislature has been informed.

Q. That was before the Legislature?

A. Yes.

BY JUDGE SHERIDAN:

Q. Did Rhode Island and New York eliminate residence requirements recently?

A. Rhode Island has as long as I can remember.

Q. All right.

A. And New York has been around 1940, I think.

(99) BY MR. GILHOOL:

Q. You have testified that all but four of the states have residence requirements.

Does Pennsylvania have reciprocal agreements with other states?

A. Yes, we have reciprocal agreements with 17 states.

Q. Do you recognize this as a copy of the Public Assistance Manual regulations on residence?

A. Yes, it is a copy.

MR. GILHOOL: You can hold onto that.

May I have marked for admission into evidence as Plaintiffs' Exhibit 1 the residence regulations of the State Public Assistance Manual.

(Residence regulations of the State Public Assistance Manual marked Plaintiffs' Exhibit No. 1 for identification.)

BY MR. GILHOOL:

Q. May I call your attention to the last page of those regulations, Appendix 1, Reciprocal States.

Those are the 17 states with whom Pennsylvania has reciprocity agreements?

A. Yes.

Q. Would you explain how reciprocity operates?

A. We initiate a request to the other state as to whether (100) they will grant assistance to people from Pennsylvania in a form agreement which obligates them to provide for people from Pennsylvania if we in turn provide for people from this other state without regard to the length of their residence in the state.

We have in all of these 17 states taken the initiative and we regularly keep in contact with other states.

We have one in process right now with Kentucky.

BY JUDGE SHERIDAN:

Q. I notice that Delaware is one of these states. How would that work with respect to this plaintiff?

The testimony shows she came here in December from Delaware.

A. Delaware, we would grant assistance to a resident from Delaware without regard to the length of stay that the person—

Q. Why hasn't it been granted in this case?

MR. GILHOOL: May I call your attention—

JUDGE KALODNER: Will you let her answer Judge Sheridan's question?

MR. GILHOOL: Certainly, sir.

A. If you notice Delaware is in relation to blind.

Q. I see.

A. Delaware withdrew. We had a reciprocal agreement with Delaware but they withdrew.

(101) BY JUDGE KALODNER:

Q. You just said that you are now working out an agreement with Kentucky?

A. Yes.

Q. I thought you told us a few minutes ago that Kentucky has no residence requirement.

A. I know. Neither does New York but they are on here too.

We work out a reciprocal arrangement anyway with New York State because this permits us to waive our year's residence requirements. They are all right but we are not.

Q. Now, is there permissive legislation to enable you to do so?

A. Yes, it is written right into the law, this reciprocity.

BY MR. GILHOOL:

Q. Miss Davis, do you recognize this letter?

A. Yes.

MR. GILHOOL: May I ask that this be marked as Plaintiffs' Exhibit 2 and offer it in evidence.

(Copy of letter dated June 23rd, 1966, addressed to Mr. Arlin M. Adams, Secretary of Public Welfare, from John E. Hiland, Jr., Director, State of Delaware Department of Public Welfare marked Plaintiffs' Exhibit No. 2 for identification.)

BY MR. GILHOOL:

Q. What is that letter, Miss Davis?

(102) A. The letter is from the State of Delaware to the Secretary of Public Welfare concerning reciprocal agreements in Public Assistance.

Q. And how does—how did it affect the agreement between Delaware and Pennsylvania?

A. It resulted in our eliminating our—well, it cancelled the reciprocal agreement.

Q. Do reciprocal agreements and their state change often?

A. Not frequently.

Q. In 1966 how many new regulations, how many new copies of Appendix 1—

JUDGE KALODNER: Where does this help us? What difference does it make?

MR. GILHOOL: Your Honor, it goes precisely to the arbitrary and capricious operation of this statute.

JUDGE KALODNER: Why?

MR. GILHOOL: Because had plaintiffs chosen to come to Pennsylvania at a slightly different season they would have received assistance.

JUDGE KALODNER: Because another state changes its rules, that means that there must be an increase on the part of the Pennsylvania Legislature.

MR. GILHOOL: Yes, sir, the Pennsylvania State Legislature.

(103) JUDGE KALODNER: That's what makes horse races. That is your idea.

I don't agree.

BY MR. GILHOOL:

Q. How often did it change in the course of calendar 1966?

A. We had made three changes in 1966.

Q. Does Pennsylvania seek these reciprocal agreements?

A. We have initiated them in all instances. No other state has approached us.

Q. Why does the Commonwealth seek them?

A. Because it is required under the law. It is an obligation under the law.

Q. Do these reciprocal agreements cost the State money?

A. No, they balance out. Just about as many persons from Pennsylvania go to the other states as come from other states into Pennsylvania.

Q. May I call your attention to this list of 17 states?

A. Yes.

Q. Would you indicate which of these states provides grants that are lower than those of Pennsylvania Public Assistance, and which higher, and which the same?

A. Arkansas is lower; Delaware is lower; Georgia is lower; Hawaii is lower; Idaho about the same; Maine lower; Michigan and Minnesota are about the same; Mississippi would be lower.

(104) New Hampshire lower; New Jersey about the same, a little higher in some areas; New York very substantially higher; Rohode Island higher; South Carolina lower; Virgin Islands lower; Wisconsin about the same.

BY JUDGE SHERIDAN:

Q. Before you leave that, are any of those 2967 families rejected, are any of those included here?

A. No.

Q. They are outside—

A. They wouldn't be. They are rejected.

BY MR. GILHOOL:

Q. May I call your attention to Section 3154.12 of the Manual of Regulations on Residence.

The provisions of that regulation I guess speak for themselves. The first paragraph and the last and last but one paragraph—

A. Yes.

Q. Would you turn your attention to those paragraphs?

How many rejected applicants have been assisted to return to the state from whence they came under this regulation?

A. We have not kept statistics on that.

Q. Is this provision 3154.12 called to the attention of all rejected applicants?

(105) A. Yes, indeed.

MR. GILHOOL: I have no further questions.

BY JUDGE LORD:

Q. Miss Davis, I would like you to clarify something for me.

Going back to the figures that you gave us that would result if the residence requirements were eliminated—

A. Yes.

Q. I believe you said that the cost would be $1,637,500 to the State.

A. Yes.

Q. And $1,400,000 to the Federal Government?

A. Yes.

Q. Is that in addition to the present cost of the administration of public assistance?

A. Oh, yes.

Q. This is in addition?

A. This would be additional cost.

Q. In other words so that I am absolutely clear, if the residence requirements were eliminated the cost would increase to the Commonwealth by $1,637,000?

A. Right.

Q. That is on your projection?

A. That is right.

(106) Q. On your projection?

A. On our projection, yes.

JUDGE LORD: I see. All right.

BY JUDGE KALODNER:

Q. Is this the projection of the Department, or your own projection?

A. No, this is the projection of the Department. We have a unit engaged in this.

Q. But you have failed to persuade the Legislature?

A. Right.

MR. CASPER: I have no questions of this witness.

BY JUDGE SHERIDAN:

Q. Do I understand your testimony now that you have recommended to the Legislature one out of five years, but your testimony is that the agency, your agency thinks there ought to be no restriction?

A. Well, we would like to see no restriction, I am sure, but one of the handicaps is the other states that have residence requirements and on the whole I think Governor Lawrence back in his administration tried to sway the Governors into agreement of eliminating residence requirements entirely.

We are looking to the Federal Government, (107) really, to take some responsibility in this.

BY JUDGE KALODNER:

Q. Well, did he—.

A. This is part of the problem.

Q. All right, but you said Governor Lawrence proposed that to other states.

What was the premise of the proposal? Did he state it?

A. The elimination of the residence requirements.

Q. I know, but when he asked he must have given some reason for it.

A. They were proposing compact arrangements very much like our reciprocal agreements at this Governors Council, and Governor Lawrence's reply to this was that the compact agreements did not solve the problem, that the major thing with a mobile population was to remove residence requirements, that they no longer had the significance that they had.

It hampered people in their movement.

BY MR. GILHOOL:

Q. Do you recognize this letter?

A. Yes.

MR. GILHOOL: I should like to have marked as Plaintiffs' Exhibit 3 and offered into evidence the letter of Governor Lawrence to Governor

Rosellini, Chairman of the (108) Governors' Conference in 1959, precisely elaborating the governor's position as Your Honor has explored it.

(Copy of letter dated June 24, 1959, addressed to Honorable Albert D. Rosellini, Governor of Washington, Olympia, Washington, together with attachments, marked Plaintiffs' Exhibit No. 3 for identification.)

MR. GILHOOL: I have no further questions, Your Honors.

Thank you, Miss Davis.

(Witness excused.)

MR. GILHOOL: I call Stanley J. Brody to the stand.

STANLEY J. BRODY, sworn.

Direct Examination

BY MR. GILHOOL:

Q. Mr. Brody, what is your occupation?

A. I am a public welfare administrator.

Q. What position do you hold?

A. I am the Regional Director for the Southeast Region for the Department of Public Welfare.

JUDGE KALODNER: Keep your voice up, please.

(109) BY MR. GILHOOL:

Q. How long have you been Regional Director?

A. Approximately three years.

Q. What is your professional background?

A. I am a member of the Bar and I have both degrees in social work and law.

Q. Prior to your encumbency as Regional Director what positions did you hold?

A. I was Executive Secretary of the State and Local Welfare Commission, which is a State commission to repattern the delivery of welfare services in Pennsylvania.

Before that I was consultant to the Attorney General of the United States in the Office of Juvenile Delinquency.

Prior to that I was the editor of the Social Legislation Information Service which is a national service on social legislation.

I have also been a legislative analyst for the old Bureau of Public Assistance for the Federal Government.

Q. What are your duties as Regional Director of the Department of Public Welfare?

A. I coordinate the seven different programs the Department engages in in this five-county area.

Q. What does public assistance provide for the recipient (110) thereof?

A. Public Assistance provides basically three kinds of services.

One of course is the money grant service, the public assistance grant. Secondly, they provide social services in the way—to clients, and thirdly, they provide medical assistance services.

Q. With respect to the latter, Mr. Brody, would you describe the medical assistance provided under public assistance as such, and would you compare and

contrast that with other medical assistance programs administered by your department?

A. Our public assistance program really is two basic medical—two basic programs; one for people who are receiving money grants, who are on public assistance.

For them we have literally—I would prefer to call it subsidized medicine, but in essence it is a complete subsidization of the recipient so far as his medical needs are concerned.

We pay for his drugs, we pay for certain basic dental care, we pay for inpatient care, we pay for physician care in the home, and on an outpatient we do not pay for in the hospital at this point.

Q. As to that there is a residence requirement?

A. There is a residence requirement under the money grant (111) programs.

Q. What other medical assistance programs do you have?

A. The other medical assistance programs we have are for inpatient care. This roughly we use on an eligibility basis for the medically indigent.

A person would be medically indigent if there were a family of four and have an income of $4,000. That would give you a rough rule of thumb.

Q. As to that—

A. We would give 60 days of inpatient hospital care followed by 60 days after that of convalescent care in a nursing home.

Q. Is there a residence requirement for that program?

A. No, there is not.

Q. You mentioned social services that accompany public assistance, and that are available to recipients.

Would you describe them?

A. Within the administrative feasibility of an overworked staff our requirements are—what we would ask our employees to do, that—to help clients to live a—to a more complete existence in terms of getting training, educational training, and we do run educational programs.

Q. Would you describe some of them in particular?

A. For example, probably the best anti-poverty program in the City is run by the County Board of Assistance. We don't (112) make too much noise about it but we have 1200 recipients of public assistance who are functionally illiterate.

We are teaching them in cooperation with the Board of Education how to read and write.

We do that through a special incentive program which encourages them to attend these classes and many of them are now starting to graduate high school.

Q. Do you have a job training program?

A. We have also work training programs in conjunction with this program.

Q. What do recipients do with their children while they are attending either the literacy class or the job training?

A. We have tried to make arrangements for day care for them while they go into these job training programs or these educational programs.

Q. Will public assistance provide for these plans as well as the care of their children?

A. Yes.

Q. What particular job training programs are you associated with?

A. Do you mean within the Department itself?

Q. What kind of jobs?

A. Well, there are a variety of jobs; any kind of hospital, orderly job—

(113) Q. Licensed practical nurse?

A. Licensed practical nurse, for some purposes, yes; clerical jobs. For example, one of these girls works right in my office for half a day.

Q. Thank you. Given the residence requirement in the public assistance program, what ramifications does that have on other programs, public or private?

A. Well, for example, the Home for the Jewish Aged will qualify as a voluntary home, or any other voluntary home—I picked this one because I am intimately familiar with it, but will qualify its intake based on residence requirement since this is the way people would be funded in the home.

This is particularly true with almost every voluntary agency.

Q. Why does public assistance work such carry-over effect on other programs?

A. This is the basic support, you see, for the agency.

For example, the Stephen Smith Home is a home that services primarily Negro clients. It depends upon the public assistance grants in order to give the service.

Q. Does any other state or county program provide income maintenance for the indigent?

A. No.

Q. Is there any public provision, absent provision or income (114) maintenance for indigent newcomers?

A. The only possibility would be under a county program, if the county were to provide these services, and there is a statutory enabling act which would allow the county to do it. De facto it doesn't.

Q. De facto it doesn't?

A. No.

Q. Why doesn't it?

A. Well, I would say certainly in Philadelphia County it doesn't, and I don't—in my experience in going through almost every county in the state, generally speaking the position of the county commissioners and/or the local authorities is that this is an obligation they are not willing to accept.

Q. Have funds ever been appropriated to the counties—

BY JUDGE KALODNER:

Q. Public assistance programs were designed to do away with the old-fashioned poorhouse?

A. Yes.

Q. That was the very purpose?

A. Yes.

Q. To take it out of the hands of the counties?

A. That's right.

BY MR. GILHOOL:

Q. Mr. Brody, what are the characteristics of public (115) assistance recipients?

A. Well, the bulk of the public assistance recipients fall into what we call the ADC category. A small group, perhaps 10 percent, come into the old age assistance category; another 10 percent perhaps

in the blind category; another 10 percent or so in the disabled category, which takes you up to 30 percent.

You get a fill-in there of general assistance, but the bulk of your grants runs around into the ADC group, which would run at least 50 percent, perhaps a little more, of your total populations.

BY JUDGE KALODNER:

Q. Isn't the figure closer to two thirds than that?

A. I would think 60 percent is closer to that. I would have to consult the figures.

Q. I was familiar with the statistics a good many years ago inasmuch as I was Secretary of the Budget of Pennsylvania.

A. If you will recall old-age assistance used to take in a large number. That has dropped substantially because of the increase of Social Security, but the ADC category has steadily grown over the last 30 years.

BY MR. GILHOOL:

Q. What percentage of public assistance recipients are unemployable?

(116) A. This is a very subjective statement. Mr. Adams, Arlin Adams, had been the Secretary of Welfare.

BY JUDGE LORD:

Q. What is he doing now, by the way?

A. He is the Chancellor of the Bar, I think.

Q. Oh, yes.

A. Among other things, I suspect, but Mr. Adams and I had occasion to test this concept of employability.

Anybody the case worker thinks is employable must report to the Bureau of Employment Security periodically for jobs. We examined the statistics of it, knowing what was happening.

We challenged the Department of Labor and Industry. They said we were sending them unemployables.

Mr. Adams and I sat down at the Bainbridge office and looked at these people coming in and it was clear that they were unemployables, and we revised our definition of—our disabled definitions.

(117) As a result I would say today, for example, of the 115,000 people on public assistance in the City of Philadelphia, the County of Philadelphia—

BY JUDGE KALODNER:

Q. How many?

A. 115,000, I would estimate perhaps 5000 might be employable.

The Special Assistant to the President of the United States made a public statement a couple weeks ago which was well-recorded in the press in which he said of the—I don't know my universe on this, but my universe may be two or three million, that there were 5000—

BY MR. GILHOOL:

Q. 7.3 million.

A. 7.3 million, that perhaps there were 5000 who were employable.

Q. What is the average—

BY JUDGE KALODNER:

Q. In other words, the employment—the hard core is just unemployable?

A. That is correct.

BY MR. GILHOOL:

Q. What is the average length of time a recipient is receiving (118) public assistance?

A. About two years.

Q. In other words, receiving public assistance is rather a crisis matter?

A. That's right.

Q. People come and go?

A. They make other arrangements. It is really a crisis program.

Of course, it is more than that too because you have to remember that public assistance is really the most comprehensive program the state has to offer.

If you are mentally ill you need public assistance usually after you have been in the state hospital. Almost the only way you can get out of a state hospital is in terms of being supported.

If you have a problem in terms of children, this is —again comes in your medical problem, so public assistance in a comprehensive way really underlies your whole social fabric in terms of dealing with the crises people have in life.

Q. Are you saying without public assistance in many cases people faced with crisis would not be able to secure these other services as well?

A. That is correct.

(119) Q. How do Pennsylvania public assistance grants compare in money terms with those in other industrial states?

A. It depends upon the category.

Q. Industrial.

A. In aging and disabled we compare favorably.

JUDGE KALODNER: What does that have to do with the problem before us?

MR. GILHOOL: Your Honor—

JUDGE KALODNER: As to the adequacy or inadequacy of comparable payments?

MR. GILHOOL: Your Honor, it might well be, though I would argue to the contrary, that the state could say we have a legitimate interest in attempting to keep the poor out of the state, because we have a program of grants that is far in excess of any other state.

As I say, I would argue that is not permissible. I want to establish simply that Pennsylvania—

JUDGE KALODNER: That they have—

MR. GILHOOL: I think we want to establish the fact of whether Pennsylvania does or does not—

JUDGE KALODNER: Did you say that is a fact that should be taken into consideration?

MR. GILHOOL: One must accommodate eventual and fortuitous consideration.

(120) JUDGE KALODNER: I can't understand this.

MR. GILHOOL: Your Honor, is this one of those horse races where I can proceed with the question?

JUDGE KALODNER: Yes. I don't understand what you are trying to get to.

What difference does it make whether or not Pennsylvania grants are lower than any other state, or higher?

MR. GILHOOL: Your Honor, if they were higher possibly the state might be justified in attempting to keep people out.

If on the other hand they are not notably higher but are lower—

JUDGE LORD: I think, Mr. Gilhool, I must take issue with your formulation of that.

I don't believe that the state is trying to keep people out. I think the state is saying you can come in, but we have to have some kind of a reasonable regulation before we pay you public assistance.

MR. GILHOOL: Fine, Your Honor. The state is trying to keep them off public assistance, and they can do that either by foreclosing it to them when they come in, or not.

JUDGE LORD: All right.

MR. GILHOOL: That is the point.

(121) JUDGE KALODNER: Answer the question then.

THE WITNESS: As I pointed out, in the three categories of disabled, blind and old-age assistance, we have—we are comparable with other states.

When it comes to ADC, we are substantially lower than the states around us, the New England States, the Middle Atlantic States.

BY JUDGE KALODNER:

Q. ADC, is it?

A. Yes.

Q. You are talking about unemployment relief?

A. Public Assistance, ADC, Aid to Dependent Children.

Q. What about unemployment relief?

A. The general assistance category?

Q. Yes, the general assistance category.

A. In the general assistance categroy we are comparable and in some cases better.

BY MR. GILHOOL:

Q. How do our grants compare with those in New York?

A. We are radically lower.

Q. With those in Illinois?

A. Substantially lower.

Q. With those in Massachusetts?

A. Radically lower.

(122) BY JUDGE LORD:

Q. Have you made any—

BY JUDGE KALODNER:

Q. What about Southern States?

A. Radically higher.

BY JUDGE LORD:

Q. Have you made any inquiry into the state of the deficit in New York State as compared to the deficit in Pennsylvania?

A. In terms of its overall budget I would not want to qualify myself as a competent witness on this except that we have examined it, of course, and we take some great pride in the fact that we have managed, if the thrust of your question is that—how have we done in public assistance vis-a-vis New York State, we have been able to maintain our public assistance levels fairly well, but we think we have done this because, in the last eight years we have increased the health, the industrial health of Pennsylvania, and we have also, through these programs, helped people off public assistance in a constructive way.

MR. GILHOOL: I have no further questions.

BY JUDGE KALODNER:

Q. Do you have any familiarity with the state's fiscal operations?

A. Yes, sir.

(123) Q. All right, does Pennsylvania have a deficit now?

A. No, sir.

Q. I read in the paper that the Governor is talking about some $200 million in taxes.

A. I was answering your question, sir, as of now. In terms of the projected budget, yes. In terms of currently, we are probably running a small surplus, in terms of our '66-'67 budget.

It is the '67-'68 budget which will require additional taxation, if adopted by the legislature.

In other words, this is a projected budget which is proposed and is now under consideration.

MR. CASPER: I have no questions, Your Honors.

JUDGE LORD: I have nothing further.

JUDGE SHERIDAN: That's all.

MR. GILHOOL: Thank you, Mr. Brody.

I call Miss Florence Silverblatt.

(Witness excused.)

FLORENCE SILVERBLATT, sworn.

Direct Examination

BY MR. GILHOOL:

Q. Miss Silverblatt, what is your occupation?

(124) A. I am a social worker.

Q. What is your present position?

A. I am Director of the Social Services Division of the City of Philadelphia.

Q. How long have you been Director of the Social Services Division of the City of Philadelphia?

A. Seven years.

Q. How long have you been associated with the City Department of Public Welfare?

A. 15 years.

Q. What is the distinction between the City Department of Public Welfare and the Commonwealth Department of Public Welfare?

A. The Commonwealth Department of Public Welfare provides public assistance as you have just heard described by the two last witnesses.

The City of Philadelphia is the County Institution District under the supervision of the Commonwealth of Pennsylvania, but actually represents the City of Philadelphia which is a city and county co-terminus,

and provides services to dependent and neglected children of Philadelphia.

Q. What kind of services do you provide to dependent and neglected children?

A. We provide the basic services of —all the services that (125) will promote the health and welfare of dependent and neglected children, and specifically we provide emergency shelter case, emergency and temporary foster home care, basic foster home and institutional care, home-maker services and many services to strengthen family life.

Q. Do you offer any grants for income maintenance?

A. No.

Q. What services do you offer indigent newcomers?

A. Newcomers?

Q. Yes.

A. Are you speaking of the person coming into the city for the first time?

Q. Yes.

A. Well, the County Institution District of Philadelphia, or their allied departments, operate under the County Institution District Law.

Q. Yes.

A. And also under the Philadelphia City Charter.

Now, the Philadelphia Charter provides services to children and their families residing in Philadelphia County.

However, it does provide for flexibility in the provision of care when it will prevent the separation of children from their parents.

(126) Q. You have mentioned foster care. Suppose a young woman came to the department and said

she wanted to place her five children in foster care until next December.

What would you do?

A. I would—a request like that is not taken very lightly because basically we know from many years of child welfare experience that whenever possible children should be kept in their own home.

We would have to know why a mother is requesting the placing of her children.

Q. Suppose the mother wanted to go to work?

A. Well, again, this goes right back to the White House Conference on Children, that children should not be removed from their parents for financial reasons and that children should not be removed except for compelling reasons.

Now, there are times when there are no parents to provide for the children or there are other times when children are neglected. We must protect the children, but we do look very carefully as to why children are separated from their parents.

Q. So is it strong public policy of your department to keep the family together?

A. Yes.

(127) BY JUDGE LORD:

Q. Let me ask you this, though. Suppose the mother has no income at all and suppose the mother is about to be evicted from where the mother and the children are living together as a family, and the mother finally decides that well, there is only one thing to do, there is only one thing left and that is to go to work and comes to you and says, "Will you place my children?"

A. Well, Your Honor, our first question would be why she could not have emergency or public assistance or temporary public assistance.

Q. From where?

A. From the Office of Public Assistance.

Q. Pennsylvania Public Assistance?

A. Yes.

Q. But she says, I have got the answer to this, "They tell me I have not been here for a year."

A. Then we would have very grave question in providing for placement for the children, not that we wouldn't have to keep these children on an emergency basis if they had no shelter, but we would argue this very strenuously because of the fact that—there are two facts, but the first fact is that this is not providing for the best welfare of the child, for the mother to be separated.

(128) Q. What do you do with them if they have got no money, no food, no shelter?

A. Well—

Q. What do you say? "It is better you stay with your mother"?

A. No, but, Your Honor, I think the question that is being raised by you is the very question that is the issue here.

Q. That is exactly why I raised it. I think we might better get to that.

A. May I speak of this in a little more detail?

I am saying to you that we would not in our department allow any child to go without shelter, and we would certainly take those children in, but I am saying that it is a very bad policy from the point of view of human value.

Let me tell you, financially when we are talking about these programs—

BY JUDGE KALODNER:

Q. You do give them help, though? You say it is a bad policy but in this particular case we have before us where the lady has five children, all of very tender age, you would take those children and place them in foster homes, wouldn't you?

A. We would, temporarily.

BY MR. GILHOOL:

Q. Until she satisfied the residence requirements?

(129) A. Yes.

Q. In this case it would be next December, so let's have a concrete case.

You would place the children in a foster home until next December?

A. We would have to, Your Honor.

Q. Miss Silverblatt, do you have available foster homes this day?

A. That is a very good question. You are making me wash my linen in public.

We have—serve 6200 children in this city. We have 711 foster homes. We purchase care from 25 voluntary agencies. We have children in our two centers awaiting care.

They should be there 90 days. They sometimes wait two years in order to find resources for these children.

Q. You speak of two centers. Where are they?

A. One center is called the Stenton Child Care Center, located in Germantown, which provides emergency care for children from three to eight. The capacity is 135. At present we have 168 there.

We have another center on Callowhill Street for infants up to three years of age. The capacity is 45. We have 47 there.

(130) Q. When do you place children in these homes?

A. Whenever there is an emergency in the family.

Q. And temporary foster homes are not available?

A. And temporary foster homes are not available.

Q. What is the average length of time that children wait in those homes for placement in private foster homes?

A. Six months is our average.

MR. GILHOOL: That's all.

Mr. Casper?

MR. CASPER: I have no questions.

MR. GILHOOL: I have no further questions. Thank you, Miss Silverblatt.

(Witness excused.)

JUDGE LORD: Mr. Gilhool, if we were to declare this section of the Act unconstitutional, that is the residency requirement, and I ask that question—

MR. GILHOOL: Yes, sir. I understand. It is a hypothetical.

JUDGE LORD: —containing no implication whatsoever of what would happen, would the entire Act fall?

MR. GILHOOL: No, sir. The Act is—the provisions of the Act are severable.

(131) JUDGE LORD: There is a severability provision in the Act?

MR. GILHOOL: Yes, sir. Your Honor, I should welcome the opportunity to present argument to the Court after further brief, if Your Honor finds it appropriate and convenient to set some date over the next little while.

JUDGE SHERIDAN: Isn't the Commonwealth going to present anything on the reasonableness of this one-year requirement?

MR. CASPER: If it please Your Honors—

JUDGE KALODNER: Come up to the bar of the Court.

MR. CASPER: At the hearing we had in this case before, you may recall the questioning. It was asked of Mr. Gilhool whether the quantity of the durational residence was in question.

His position was—it was an all-or-nothing position. Durational residence requirements, period, were unconstitutional, so we have positioned our counter-argument on that basis.

JUDGE SHERIDAN: Just because he takes that position? Suppose we don't think that?

MR. CASPER: Subject to the argument in our brief, Your Honor, where we cited a number of arguments in (132) support of the reasonableness of specifically the one-year period, we made reference if you may recall to the provisions in the Social Security Act which allow a residence period of up to one year.

We made reference to the tie-in between the one year and fiscal budgeting.

Those are arguments we addressed ourselves to.

JUDGE KALODNER: Miss Davis, who, is presently employed by the Department, and there is no reason to question—she seems a very knowledgeable witness, and she said that the total cost to the state would be $1,637,000 per year if the residence requirement was waived, and that compares to an annual outlay of some $336,500,000.

MR. CASPER: Yes, Your Honor.

JUDGE KALODNER: Which is an infinitesimal fraction.

JUDGE LORD: Less than one-half of 1 per cent.

MR. CASPER: Yes, Your Honor.

JUDGE KALODNER: That is in essence the state's position, and the department having to do with the situation has recommended to the Legislature that the provision be repealed because it would be of little cost, minute cost, to the state.

(133) Judge Lord has said it is less than one-half of 1 per cent.

MR. CASPER: I believe so, Your Honor, but these have been proposals that have been put to the Legislature not just once—

JUDGE KALODNER: Don't we have to decide whether or not this provision in the law is a reasonable one?

MR. CASPER: In one sense, yes, Your Honor.

JUDGE KALODNER: What other sense is there?

MR. CASPER: In two phases. Mr. Gilhool's first argument is to say that no residence requirement at all can be.

JUDGE SHERIDAN: Suppose we reject that?

MR. CASPER: Then the Court would have to face the question of what kind of residence requirement.

JUDGE SHERIDAN: You have submitted no evidence.

MR. CASPER: Your Honor, I say that we, in our brief, addressed ourselves to that, giving some argument in support of the present one year's requirement.

JUDGE SHERIDAN: What about the facts? How do we know about the budget other than what we have heard today?

This is the first we have heard.

(134) MR. CASPER: If I may say so, Your Honor, I am in a position of representing the Commonwealth in a case where the constitutionality of a state statute is being challenged, a statute passed by the Pennsylvania Legislature.

The Department of Public Welfare as part of the Executive may or may not agree with what the Legislature has enacted into law.

At the moment as I conceive my job to be, I have to try and put before Your Honors what I can to sustain the legality of the law as it is on the books, irre-

spective of what the department may have to say with respect to the reasonableness of the test that is presently adopted, or some modification thereof. That is the law at the moment.

JUDGE LORD: It is, at the moment.

MR. CASPER: Yes, sir, but I have not been briefed nor do I know of any machinery where I could be briefed by the gentlemen of the Legislature who are responsible for this particular policy.

If I were to produce evidence—

JUDGE KALODNER: You might be briefed on the legislative position, that of the Department.

JUDGE LORD: You have given us no facts at all.

MR. CASPER: No, Your Honor. I don't see how (135) I can. If I could—

JUDGE LORD: The plaintiff did. The plaintiff gave us facts. The plaintiff gave us facts showing that the increase, if the residence requirements were lifted, would be only ½ of 1 per cent of an increase over the total budget.

The plaintiff has presented evidence here that there would be no budgetary problems; in fact, the budgetary problems or the administrative problems would be less if the residence requirements were eliminated.

The Commonwealth has given us no facts whatsoever.

MR. CASPER: If I may say so, Your Honor, the witnesses that Mr. Gilhool called are the very people that I would rely on for my facts. The facts would be exactly the same.

JUDGE LORD: Splendid, then.

MR. CASPER: But I am saying, if I may say this, these are the experts from the Department of Public Welfare. The experts of the Department of Public Welfare and the Department is not necessarily responsible for the decision which is reflected in law.

That is my problem in this situation. I have no indication from any source that the facts would be—the (136) Legislature might come forward with different facts.

JUDGE SHERIDAN: You have argued in your brief that for budgetary reasons this is reasonable.

MR. CASPER: Yes, Your Honor.

JUDGE SHERIDAN: In view of this evidence today do you withdraw that argument?

MR. CASPER: Certainly not. I would say to Your Honor that I would have to take a position that, however, whatever it would be in percentage, that one million and some dollars is something to be reckoned with, and if the Legislature wants to use that money for some other purpose on their priority scale, that they have the power to do it, although other people might disagree with it. That is the position.

JUDGE KALODNER: Don't they have to reasonably do it?

MR. CASPER: Reasonably, within a very broad discretion, Your Honor.

In other words, it is not a question of having a large fund of monies available and somebody saying do you

have anything like a reasonable claim? If so, we will grant it to you.

It is a matter of not enough money being (137) available for all the needs that there are, even in terms of the levels of public assistance of all categories, so therefore even one million dollars is very important. It is not a question of going to a reasonable place.

JUDGE KALODNER: Do you know how much the budget of Pennsylvania is?

MR. CASPER: It is very considerable, Your Honor, but I will still say that one million dollars may also be considerable in terms of where it is allocated, and this is a question of—in which the Legislature should be given last discretion.

JUDGE LORD: Suppose it was $50?

MR. CASPER: We would be reduced, I confess, to de minimis, Your Honor.

JUDGE LORD: All right.

JUDGE KALODNER: You have no evidence to offer? The Commonwealth has no evidence to offer?

MR. CASPER: No, Your Honor.

JUDGE LORD: All right, we have it on the record. Mr. Gilhool, do you wish to file a further brief?

MR. GILHOOL: Yes, Your Honor. I do.

JUDGE LORD: Within what time?

MR. GILHOOL: Ten days at the very longest, (138) Your Honor.

JUDGE LORD: Very good. Does the Commonwealth wish to file another brief?

MR. CASPER: If at all we would like to file it after Mr. Gilhool submits his to us.

JUDGE LORD: We will give you ten days from the date on which you receive Mr. Gilhool's brief. That does not mean ten days from today. If he gets his in in five days, you have 15 days from today.

MR. CASPER: I understand. Thank you very much.

JUDGE LORD: Then if we determine that we want oral argument we will so advise you.

MR. GILHOOL: Thank you, Your Honor. My request stands of record.

JUDGE SHERIDAN: You want oral argument, do you?

MR. GILHOOL: Yes, sir.

JUDGE LORD: How about if we think your brief is so abundantly clear that—

MR. GILHOOL: Your Honor, I have no desire to burden you further.

JUDGE LORD: I think we understand your position.

(Adjournment at 12:25 p.m.)

In the United States District Court for the Eastern District of Pennsylvania

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(Title Omitted in Printing)

VIII.

MOTION FOR DETERMINATION THAT CLASS ACTION MAY BE MAINTAINED

Pursuant to Fed. R. Civ. P. 23, plaintiffs move this Court to determine by order that the action herein brought as a class action to be so maintained, on the following grounds:

1. Plaintiffs are members of that class of persons, citizens of the United States and residents of the Commonwealth of Pennsylvania, who are entitled to public assistance except that they have not resided in Pennsylvania during the immediately preceding one year.

2. The persons constituting the class are so numerous as to make it impractical to bring them all before this Court.

3. There are questions of law common to the class and the claims of plaintiffs here are typical of the claims of the class.

4. Plaintiffs fairly and adequately represent the class and will fairly and adequately present its interest.

5. Defendants have refused public assistance on grounds applicable to the class, namely, the provisions of the Public Assistance Law of the Commonwealth of Pennsylvania, Act of June 24, 1937, P. L. 2501, Secs. 9 (a) (2) and 9 (d), as amended, 62 Purd. Stat. Sec. 2508.1 (6) which require residence in Pennsylvania for one year immediately preceding application as a condition of public assistance, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

Respectfully submitted,

Thomas K. Gilhool
Consumer's Advocate
Community Legal Services, Inc.
313 South Juniper Street
Philadelphia, Pennsylvania
Attorney for Plaintiffs

(Affidavit of service omitted in printing.)

In the United States District Court for the Eastern District of Pennsylvania

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(Title Omitted in Printing)

IX.

ORDER

And Now, this 31st day of May, 1967, pursuant to Fed. R. Civ. P. 23, it is determined and hereby Ordered that the above mentioned action is to be maintained as a class action on behalf of that class of persons, citizens of the United States and residents of the Commonwealth of Pennsylvania, who are entitled to public assistance except that they have not resided in Pennsylvania during the immediately preceding one year.

By the Court:
(s) Joseph S. Lord, III
J.

In the United States District Court for the Eastern District of Pennsylvania

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(Title Omitted in Printing)

X.

FINDINGS OF FACT, DISCUSSION AND CONCLUSIONS OF LAW

Before: Harry E. Kalodner, Circuit Judge, and Michael H. Sheridan and Joseph S. Lord, III, District Judges.

By: Joseph S. Lord, III, District Judge.

FINDINGS OF FACT

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1. Plaintiffs are Juanita Smith, individually and, by her, her minor children, John Smith, Tabitha Miller, Sophia Paynter, William Paynter, and Voncell Paynter.

2. Defendants, with the exception of William C. Sennett, Attorney General of the Commonwealth of Pennsylvania, are variously charged with the powers and duties of administering public assistance, determining the eligibility of all applicants, superintending the public assistance program, and establish-

ing rules, regulations, and standards for administration by County Boards of Assistance.

3. The Act of June 24, 1937, P. L. 2051, §§9(a)(2) and 9(d), as amended, 62 Purd. Stat. §2598.1(6), provides that assistance shall be granted only to or in behalf of a resident of Pennsylvania who has resided therein for at least one year immediately preceding the date of application.

4. Plaintiff Juanita Smith resided in Philadelphia, Pennsylvania until 1959 and attended public schools in Philadelphia. From 1959 to December 1966, plaintiff Juanita Smith and other plaintiffs as they were born resided in the State of Delaware. Since the second week of December, 1966, plaintiffs have resided at 2859 Amber Street, Philadelphia, Pennsylvania.

5. Plaintiffs are now and were at the time of the institution of this suit citizens of the United States.

6. Plaintiffs intend to reside permanently in Pennsylvania.

7. On February 20, 1967, plaintiffs made application for public assistance and that day received a grant of $115.00.

8. A second grant in the same amount was received two weeks later on March 10, 1967.

9. On March 13, 1967, plaintiff Juanita Smith was informed by the County Board of Assistance that assistance to her and her children would be terminated.

10. Assistance to plaintiffs was terminated solely because they did not satisfy the statutory requirement of one year's residence immediately preceding their application.

11. No alternative resources, either from public programs or private agencies, exist to provide financial assistance to maintain plaintiffs here.

12. Plaintiffs are faced with a choice of remaining in Pennsylvania with no income to maintain themselves, separating the family by placing the children in foster home care, or returning to Delaware.

13. Plaintiffs are suffering and will suffer immediate, certain, great and irreparable injury from termination of public assistance.

14. If preliminarily enjoined from refusing to continue public assistance to plaintiffs, defendants will suffer negligible injury.

DISCUSSION

Requisite to the granting of a preliminary injunction is a showing that the plaintiff will suffer irreparable injury and a balancing of the "conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction." Yakus v. United States, 321 U. S. 414, 440 (1944); Joseph Bancroft & Sons Co. v. Shelly Knitting Mills, Inc., 268 F. 2d 569, 574 (C. A. 3, 1959). We have found that plaintiffs will suffer irreparable injury. On the other hand, it is obvious that any injury to the Commonwealth would be *de minimis*. Thus, as to this essential, the balance is heavily in favor of the plaintiffs.

There are on the record here serious and substantial questions[1] of constitutional dimension, *inter alia*, as to whether the one-year residence requirement in the Pennsylvania Act of June 24, 1937 is a reasonable classification.[2]

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter.

2. Plaintiffs have raised serious and substantial issues concerning the constitutionality of the Pennsylvania Act of June 24, 1937, P. L. 2051, §§9(a), (2) and 9 (d), as amended.

3. The record presents serious and substantial questions of constitutional dimension.

4. Plaintiffs will suffer imminent and irreparable harm if preliminary relief is withheld.

5. Any injury to defendants as a result of the granting of preliminary relief will be negligible.

6. Plaintiffs are entitled to a preliminary injunction as prayed.

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[1] Railroad Yardmasters of America v. Pennsylvania Railroad Company, 224 F. 2d 226, 229 (C.A. 3, 1955).

[2] Carrington v. Rash, 380 U.S. 89, 93 (1965); McLaughlin v. Florida, 379 U.S. 184, 190 (1964).

DECREE

1. And Now, June 1, 1967, defendants are preliminarily enjoined from enforcing sections 9 (a) (2) and 9 (d) of the Act of June 24, 1937, P. L. 2051, as amended, and from withholding relief benefits from plaintiffs because of the terms of those sections.

2. This preliminary injunction shall not be construed to extend to any person other than the plaintiffs set forth in Finding of Fact No. 1:

By the Court
Joseph S. Lord, III
J.

In the United States District Court for the Eastern District of Pennsylvania

XI.

AFFIDAVITS

(1) AFFIDAVIT OF JOSE FOSTER

Commonwealth of Pennsylvania
County of Philadelphia, ss:

Jose Foster, being first duly sworn, on oath, deposes and says:

1. That she is applicant for intervention as plaintiff in the present action, and plaintiff in the complaint attached to said application, and the mother of four minor children, by her, applicant-plaintiffs in the present action.

2. That neither she nor her children have any income whatever.

3. That with her four children she presently shares a six room house, three bedrooms and one bath, with her sister and brother-in-law and their six minor children.

4. That all three adults and ten children share the same table, supplied only by her brother-in-law's limited income.

5. That she has been placed by medical advis[c]e upon a special non-salt diet because of her high blood pressure, which diet alone requires special expenditures on food.

6. That she is under medical care requiring frequent visits to Temple University Hospital but that without the necessary money for transportation she has not been able to keep many of these appointments.

7. That she has applied for public assistance and with her children is in immediate and irrevocable need of public assistance, as demonstrated by the fact that she is eligible therefor and fully entitled to receive it except that, with her children, she has not resided continuously in Pennsylvania for one year immediately preceding her application for public assistance.

7. That she and her children are suffering and will suffer immediate and irreparable injury from the denial of public assistance.

(s) Jose Foster
Jose Foster

(Jurat omitted in printing)

(2) AFFIDAVIT OF LOUISE THOMPSON

Commonwealth of Pennsylvania
County of Philadelphia, ss:

Louise Thompson, being first duly sworn, on oath, deposes and says:

1. That with her husband, Howard Thompson, and six children, aged 12, 11, 9, 7, 4 and 2 years, she resides at 2143 North Newkirk Street, Philadelphia, Pennsylvania.

2. That since August 28, 1967, her sister, Joe Foster, and her four children have lived with her and her family, sharing her table and her husband's income.

3. That the house at 2143 North Newkirk Street has only three bedrooms and one bath and is thus overcrowded by the presence of three adults and ten children.

4. That her family's income ranges between $80 and $90 per week because of seasonal variations in her husband's work.

5. That her family's gas bill is one and one-half months in arrears, that a shut-off notice has been received from the Gas Works, that on November 6, 1967 an employee of the Gas Works appeared to turn the gas off, refrained from doing so only because she was not at home, and promised to return within the week.

6. That her family's telephone bill is two months in arrears.

7. That her family has no income or savings from which to pay the overdue bills.

8. That the monthly rent of $59.50, exclusive of utilities, is due November 15, 1967 and that if that expense is to be met at all, it must be met out of next week's income, as must the food and other necessary daily expenses.

9. That her family's income is insufficient to support three adults and ten children at a minimum standard of health and dignity.

10. That she has been under treatment at Temple University Hospital for a nervous condition which condition has been aggravated by the present crowded and lean circumstances.

11. That one of her children, an 11 year old son who is not in school, is retarded and disturbed and that his condition is aggravated by the crowded and lean circumstances.

12. That she and her family are suffering and will continue to suffer immediate and irreparable injury from the denial of public assistance to her sister and her sister's family.

(s) Louise Thompson
Louise Thompson

(Jurat omitted in printing.)

In the United States District Court for the Eastern District of Pennsylvania

Civil Action No. 42419

Juanita Smith, individually, and by her, her minor children, John Smith, Tabitha Miller, Sophia Paynter, William Paynter, Voncell Paynter, 2859 Amber Street, Philadelphia, Pennsylvania; on behalf of themselves and all others similarly situated,

Plaintiffs

v.

Roger A. Reynolds, Mayer I. Blum, Herbert R. Cain, Jr., Katherine M. Kallick, Rosalie Klein, Alfred J. Laupheimer, Edward O'Malley, Jr., Norman Silverman, Julia L. Rubel, constituting the Philadelphia County Board of Assistance, William P. Sailer, its Executive Director, 1400 Spring Garden Street, Philadelphia, Pennsylvania; Thomas W. Georges, Jr., Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania Health and Welfare Building, Harrisburg, Pennsylvania; William C. Sennett, Attorney General of the Commonwealth of Pennsylvania,

Defendants

Jose Foster, individually, and by her, her minor children, Jeanette Foster, Annie Bea Foster, William Foster, Frances Foster, 2143 North Newkirk Street, Philadelphia, Pennsylvania

Applicants for Intervention as Plaintiffs

XII.

ORDER

And Now, November 14, 1967, upon the motion of Jose Foster, individually, and by her, her minor children, Jeanette Foster, Annie Bea Foster, William Foster and Frances Foster, for leave to intervene as plaintiffs in this action, it is Ordered that said applicants be and hereby are granted leave to intervene as plaintiffs in this action.

Joseph S. Lord, III.
J.

In The United States District Court For
The Eastern District of Pennsylvania

(Title Omitted in Printing)

XIII.

ORDER

Whereas, in the above titled action it appears by verified complaint and affidavits that a temporary restraining order preliminary to hearing upon motion for a preliminary injunction should issue, without notice and a hearing, because immediate and irreparable injury, loss and damage will result to applicants for intervention as plaintiffs, Jose Foster and her four minor children, before notice can be served and a hearing had thereon, in that defendants have denied public assistance to applicant-plaintiffs and left them destitute and without income to support and maintain themselves.

Notice and a hearing before entering a temporary restraining order should not be required because time and the immediate jeopardy of applicant-plaintiffs do not permit such a hearing.

Now, therefore, on motion of the applicant-plaintiffs,

It is ordered that defendants, each of them, their agents, servants and employees, and all persons act-

ing by, through or under them or either of them or by or through their order be, and they are hereby, restrained from denying public assistance to applicant-plaintiffs Jose Foster and her four minor children solely because they have not resided continuously in Pennsylvania during the year immediately preceding their application for public assistance.

Issued at 2:20 o'clock p.m. this 14th day of November, 1967.

Joseph S. Lord, III.
J.

In The United States District Court For.
The Eastern District of Pennsylvania

Civil Action No. 42419

Juanita Smith, individually, and by her, her minor children, John Smith, Tabitha Miller, Sophia Paynter, William Paynter, Voncell Paynter, on behalf of themselves and all others similarly situated

vs.

Roger A. Reynolds, Mayer I. Blum, Herbert R. Cain, Jr., Katherine M. Kallick, Rosalie Klein, Alfred J. Laupheimer, Edward O'Malley, Jr., Norman Silverman, Julia L. Rubel, constituting the Philadelphia County Board of Assistance, William P. Sailer, its Executive Director; Max D. Rosenn, Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania; William C. Sennett, Attorney General of the Commonwealth of Pennsylvania

XIV.
OPINIONS OF THE COURT

OPINION

Before: Harry E. Kalodner, *Circuit Judge,* and Michael H. Sheridan, and Joseph S. Lord, III, *District Judges.*

By: Joseph S. Lord, III, *District Judge.*

This class action challenges the constitutional validity of a Pennsylvania statutory provision which requires applicants for public welfare to have resided in the State for a period of one year immediately preceding the date of application for assistance. The members of the class are citizens of the United States and bona fide residents of Pennsylvania who would otherwise be qualified for public assistance but for the fact that they have not resided in Pennsylvania for a period of one year. We hold that the residence requirement, as presently administered, constitutes a denial of "equal protection of the laws" to members of the class, and that accordingly, Section 432 (6) of the "Public Welfare Code," Act of June 13, 1967 P. L. ..... (Act No. 21)[1] is void and may no longer be enforced.

We are aided in our conclusion by full evidentiary hearings. Plaintiffs' evidence showed that the requirement of one year's residence as a condition to the receipt of public assistance has no logical basis and is wholly arbitrary in its application to needy residents of the Commonwealth. The Attorney General of Pennsylvania, far from disputing this evidence, openly embraced plaintiffs' proofs, adopting the testimony of the expert witnesses who were produced, while introducing no evidence of his own.[2]

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[1] At the time suit was instituted, the identical provisions were contained in Sections 9(a)(2) and 9(d) of the Act of June 24, 1937, as amended, 62 Purdon's Pa. Stat., Section 2508.1(6).

[2] The Deputy Attorney General stated for the record at the conclusion of the second hearing: "If I may say so, Your Honor, the witnesses that Mr. Gilhool [plaintiffs'

(1) The one-year residence requirement does not necessarily prevent migration to the State of impoverished individuals, nor would the abolition of the requirement enhance the attractiveness of the Commonwealth to such persons. Thus, there would be no noticeable increase in the influx of newcomers, poor and otherwise, if the requirement were deleted.

(2) Those persons who do come to Pennsylvania and find themselves in need of public assistance within the first year of their arrival do not, to any significant extent, emigrate to the State for the purpose of obtaining such aid. Although the fact that they may not at present obtain welfare benefits may tend to deter or discourage migration to the State, there is concededly no competent evidence that it does so in fact, nor is there evidence that newcomers, once arrived, depart once they discover their subordinate status. Those who come into the State (and later find themselves in need of public assistance) do so for reasons wholly unrelated to the incidental benefits of public welfare which might be available to them. In most instances, they come to accept or seek employment in the State, to rejoin or join family relations, or for health reasons. Seeking new opportunities or established contacts, they find themselves temporarily in need of public assistance; they apply for such help, and it is denied to them.

(3) The cost to the Commonwealth of providing public assistance to those to whom it is now refused

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counsel] called are the very people that I would rely on for my facts. The facts would be exactly the same." N.T. 135.

because they have not been residents of the State for at least one year would be an insignificant portion of the present welfare budget—about one half of one per cent—and half of this amount would be absorbed by the Federal Government.

(4) Administrative costs and budgetary problems would actually be significantly decreased if the residence requirement were abolished; the necessity of screening and investigating applicants in this respect would be eliminated and the savings to the Department of Public Welfare in time and money would be substantial.

(5) The Commonwealth can ascribe no purpose at all to the distinction made by the Statute between residents who have lived in the State for over one year and residents who have not. The Attorney General's position is simply that the Legislature may allocate the State's resources in any way it wishes, and that it may discriminate freely among residents in the matter of public welfare benefits except with respect to the applicant's race, religion, or sex. Any other distinction or classification is permissible, argues the Attorney General, since the Legislature has the uncontrolled discretion to spend its money on whichever of its residents it chooses to favor.

It is elementary constitutional doctrine that the Equal Protection Clause of the Fourteenth Amendment prohibits a State or instrumentalities of the State from invidious discrimination among its citizenry. Reitman v. Mulkey, 387 U. S. 369. There is, of course, no constitutional right to receive public welfare any more than there is a constitutional right

to public education or even public police protection. However, if the State chooses to provide such public benefits, privileges, and prerogatives, it cannot arbitrarily exclude a segment of the resident population from their enjoyment. It is for this reason that classification in State statutes which purport to exclude from coverage one or more classes of individuals who would otherwise qualify for the advantages and opportunities conferred by the Legislature must be examined in order to determine whether there is any legitimate purpose for the distinction; whether an important and constitutionally cognizable State interest inheres in the classification, or whether on the other hand, the exclusion is purely arbitrary. Loving v. Virginia, 388 U. S. 1 (1967); Carrington v. Rash, 380 U. S. 89, 93 (1965); McLaughlin v. Florida, 379 U. S. 184, 1960 (1964). If the distinction is arbitrary, then the statute deprives the citizens so excluded of equal protection of the State's laws and of the benefits which those laws may impart. A discrimination without rational basis and without legitimate purpose or function is inherently invidious, and hence constitutionally interdicted.

In the context of the present case, we are totally at a loss to discern what purpose, if any, the Pennsylvania Legislature has ascribed to the one year residence requirement. To require a period of one year's residence as a condition to the receipt of public assistance results in the division of Pennsylvania residents into two classes: those who have lived in the State for one year and those who have lived in the State for less than one year. Such a distinction has no apparent purpose. See Green v. Department of Pub-

lic Welfare, 270 F. Supp. 173 (Del. 1967).[3] The Attorney General does not, of course, contend that its purpose is to erect a barrier against the movement of indigent persons into the State or to effect their prompt departure after they have gotten there and begun to realize the disadvantages of second-class citizenship. Such a purpose would be patently improper and its implementation plainly impermissible. The right to travel freely without deterrence is inherent in the notion of a unified nation, and no State may exclude citizens migrating from other States, whatever the reason for the migration. Edwards v. California, 314 U. S. 160 (1941); United States v. Guest, 383 U. S. 745 (1966). In any event, the proof mutually accepted by both sides in this case is that deletion of the residence requirement would not result in an influx of destitute relief-seekers.

Nor is there any contention that the residence condition enhances the administrative effectiveness of the Public Assistance Act. To the contrary, all of the evidence is to the effect that many of the burdensome budgetary and administrative problems which are currently encountered by welfare officials in the conduct of the public assistance program would be substantially alleviated by the removal of this bottleneck in the processing of applicants. Moreover, the added cost of the Commonwealth of helping the now excluded class would be relatively insignificant. Needless

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[3] See also Thompson v. Shapiro, 270 F. Supp. 331 (Conn. 1967) (presently on appeal to the United States Supreme Court) Ramos v. Health & Social Services Bd., F. Supp. (Wis. 1967) Harrell v. Tobriner, F. Supp. (D.C. 1967).

to say, there would be some increase in cost. It is axiomatic that Pennsylvania does save some money now by excluding residents of less than one year. But the constitutional test of equal protection is not satisfied by considerations of minimal financial expediency alone. To be sure, the State may reduce or even eliminate entirely welfare payments if it chooses to conserve resources in this fashion; it may turn all beggars from its doors. But it may not arbitrarily turn away some who are in need while bestowing its charitable favors on others. There must be some otherwise legitimate purpose for excluding members of the class who are in fact deprived of the protection and privileges of existing laws. It is not enough to say that the class is excluded because money is saved.

Needy newcomers are no less needy because they are newly arrived. They are no less residents of the State because they have only lately begun to reside there. And they are no less entitled to enjoy the public welfare benefits of which every needy resident of Pennsylvania may partake simply because they have experienced their critical need soon after migrating to their new home.

We do not seek to substitute our judgment for that of the Pennsylvania Legislature. We merely find as an indisputable conclusion of fact, as well as of law, that the Legislature itself has ascribed no proper purpose to the one-year classification. If the classification is without purpose, it is arbitrary *per se* and offends the Equal Protection Clause.

The Pennsylvania residence requirement constitutes a manifest violation of the Equal Protection Clause;

accordingly, the Commonwealth will be enjoined from its further enforcement.

(s) Joseph S. Lord, III

DECREE

And Now, this 18th day of December 1967, it is Ordered and Decreed that:

(1) Defendants are permanently enjoined from enforcing Section 432 (6) of the "Public Welfare Code," Act of June 13, 1967, P. L. (Act No. 21), and from withholding relief benefits from plaintiffs because of the terms of that section;

(2) The enforcement of this injunction is stayed pending prompt application to the Supreme Court for such further stay as that Court deems proper, pending appeal, Provided that a notice of appeal is filed within the time and in the manner prescribed by law;

(3) The preliminary injunction entered on June 1, 1967, respecting the named individual plaintiffs and extended to the named intervening plaintiffs on November 14, 1967, is contined in force pending the final disposition of this permanent injunction.

By the Court
Joseph S. Lord, III.
J.
Michael H. Sheridan
J.

Sheridan, *District Judge*, concurring.

I concur in holding that the Pennsylvania one-year residence requirement violates the Equal Protection Clause, and must be enjoined from further enforcement. I do not believe that any and all time limitations would be constitutionally interdicted. Rather, I am not convinced that on the present record a rational basis or legitimate purpose can be found in the budget-making function of the Legislature. The record reveals no other basis or purpose which would justify a one-year residence requirement in this kind of legislation.

Michael H. Sheridan

(s) Kalodner

Kalodner, *Circuit Judge*, dissenting.

By legislative enactment forty states of the Union and the District of Columbia[1] impose a one-year residence requirement as a condition of eligibility to qualify for public assistance grants to needy families with children.

The Congress of the United States, in enacting legislation providing for federal contributions to such state administered public assistance programs has in specific terms provided that states may establish a one-year residence eligibility requirement.[2]

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[1] District of Columbia Public Assistance Act of 1962, Title 3, Chapter 2, D.C. Code; §3-203, "Eligibility for public assistance", enacted by Congress on October 15, 1962.

[2] Section 602(b), 42 U.S.C.A.

The majority now holds that the one-year residence requirement imposed by the Pennsylvania statute[3] is unconstitutional under the Equal Protection Clause of the 14th Amendment because in its view it "has no logical basis and is wholly arbitrary in its application to needy residents of the Commonwealth."

In striking down the Pennsylvania statutory provision, the majority has, in sum, substituted its judgment for that of the Pennsylvania legislature, the legislatures of its thirty-nine sister states, and last enacted the federal contribution statute and the District of Columbia statutes.

The majority's action constitutes nothing less than judicial usurpation of the legislative function in presumptious disregard of the doctrine of separation of powers so firmly established since the founding of our Republic and of the teaching of numerous decisions of the Supreme Court of the United States.

In my opinion, the majority's "fact finding" that the statutory one-year residence requirement "has no logical basis and is wholly arbitrary," is entirely without evidentiary premise.

I am of the view that this Court should reject the plaintiffs' contention that the Pennsylvania statute is in contravention of the Fourteenth Amendment because the plaintiffs have failed to rebut the presumption of its constitutionality by proof that the statute "does not rest upon any reasonable basis, but is essentially arbitrary." Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 79 (1911).

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[3] Section 432(6) of the Pennsylvania Public Welfare Code, Act of June 13, 1967.

Discussion of the views stated must be prefaced by a statement of these settled principles to which a federal court must adhere in determining whether a statute contravenes the Fourteenth Amendment:

"... [T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others," and "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective."[4]

"State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality" and "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."[5]

"Every presumption is to be indulged in favor of faithful compliance by Congress with the mandates of the fundamental law," and "Courts are reluctant to adjudge any statute in contravention of them."[6]

"One who assails the classification" in a state statute "must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."[7]

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[4] McGowan v. Maryland, 366 U.S. 420, 425 (1961).
[5] Id. 425, 426.
[6] United States v. Butler, 297 U.S. 1, 67 (1936).
[7] Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 79 (1911).

"A statute is not invalid under the Constitution because it might have gone farther than it did . . ." [8]

". . . 'reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.' " [9]

"Normally, the widest discretion is allowed the legislative judgment in determining whether to attack some, rather than all, of the manifestations of the evil aimed at; and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious." [10]

Federal courts are now endowed with authority to determine whether the Congressional [legislative judgment] . . . is sound or equitable, or whether it [. . .] well or ill with the purposes of the Act," and the [. . .] or unwisdom" of a statute is an irrelevant factor in determining the issue of its constitutionality.[11]

The distilled essence of the stated principles is that legislatures are endowed with a wide range of discretion in enacting laws which affect some of its residents differently from others;[12] "every presumption" of constitutionality must be accorded by courts

[8] Rochen v. Ward, 279 U.S. 337, 339 (1929).
[9] Morey v. Doud, 354 U.S. 457, 465 (1957).
[10] McLaughlin v. Florida, 379 U.S. 184, 191 (1964).
[11] Flemming v. Nestor, 363 U.S. 603, 611 (1960).
[12] Except in instances where the differences are based on race, color or religion. Loving v. Virginia, 388 U.S. 1 (1967).

to a challenged law and the challenger bears the burden of proving that the law is irrational and "essentially arbitrary"; a statutory discrimination will not be declared unconstitutional "if any state of facts reasonably may be conceived to justify it"; the circumstance that a law "might have gone further than it did" in remedying a public social problem does not make it unconstitutional; and the "wisdom or unwisdom," soundness or unsoundness of the legislative judgment are irrelevant considerations in determining the issue of constitutionality.

The majority has not applied the stated principles in holding that the Pennsylvania one-year residence requirement contravenes the Fourteenth Amendment.

Its threshhold errors are (1) failure to take into account the wide range of discretion vested in the Pennsylvania legislature; (2) failure to accord to the challenged statute the presumption of constitutionality; and (3) failure to give effect to the doctrine that a state may enact laws which affect some of its residents differently from others when the difference is not based on racial or religious considerations.

The majority has structured its ruling on these stated conclusions:

> ". . . [We] are totally at a loss to discern what purpose, if any, the Pennsylvania Legislature has ascribed to the one-year residence requirement;"
>
> the ". . . division of Pennsylvania residents into two classes: those who have lived in the State for one year and those who have lived in

the State for less than one year . . . has no apparent purpose";

". . . many of the burdensome budgetary and administrative problems" of public welfare officials "would be substantially alleviated by the removal of this bottleneck in the processing of applicants";

". . . the added cost to the Commonwealth of helping the now excluded class would be relatively insignificant."

With respect to these "conclusions" this must be said:

The majority's failure to "discern" the legislative purpose in enacting the one-year residence requirement and its further failure to see any "apparent purpose" into "the division of Pennsylvania residents into two classes," do not afford an affirmative legal basis for its ultimate fact-finding that "Plaintiffs' evidence showed that the requirement of one year's residence as a condition to the receipt of public assistance has no logical basis and is wholly arbitrary in its application to needy residents of the Commonwealth."

Nor do the majority's conclusions that (1) Pennsylvania's "burdensome budgetary and administrative problems . . . would be substantially alleviated" if the legislature had not enacted the one-year residence requirement, and (2) ". . . the added cost to the Commonwealth of helping the now excluded class would be relatively insignificant," provide a premise for its holding of unconstitutionality. These conclu-

sions are merely "judgment" conclusions which in effect substitute the judgment of a court for the judgment of the legislature. As earlier stated, the "wisdom or unwisdom" of a statute is an irrelevant consideration in determining the issue of unconstitutionality.

Coming now to my view that the challenged Pennsylvania statute must be held constitutional because the plaintiffs have failed to rebut the presumption of its constitutionality by adducing evidence that the statute "does not rest upon any reasonable basis but is essentially arbitrary."

The "evidence" relied on by the majority is not by any stretch of the imagination "evidence" within the meaning of that term. The majority has treated as "evidence" its "loss to discern" any "purpose" in the enactment of the legislation, and its "judgment" conclusion that Pennsylvania's "burdensome budgetary and administrative problems . . . would be substantially alleviated" if the challenged residence requirement had not been enacted. The speculative evidence that the "added cost to the Commonwealth of helping the now excluded class would be relatively insignificant" is irrelevant to the determination of the constitutionality of the legislation.

The following "state of facts reasonably may be conceived to justify" the challenged statutory discrimination:[13]

The Pennsylvania Legislature annually enacts a budget for the following year which must limit the

[13] McGowan v. Maryland, 366 U.S. 420, 426.

total of its appropriations to its estimated annual tax revenue, inasmuch as Pennsylvania's Constitution limits the Commonwealth's borrowing capacity to $1,000,000.

The Pennsylvania Legislature appropriated [$199,800.00] of state revenues for public assistance grants for the fiscal year ending June 30, 1968—a significant percentage of the Commonwealth's annual budget.

The Legislature in its budget-making is required to make such an appropriation for public assistance as can be reasonably and intelligently estimated on the basis of these factors:

1. The estimated yield of state taxes.

2. The number of its residents currently receiving public assistance grants. They include needy families with dependent children, indigent aged and blind, permanently disabled persons between the ages of 18 and 64, and those who need assistance in the payment of bills for in-patient hospital and nursing home care, doctor, dentist, nursing and drug expenses.[14]

3. Increase in cost-of-living expenses of those on public assistance rolls which make necessary increased allotments.

4. Increase in the number of those receiving indigent aged assistance in view of the extended life expectancy experienced in recent years.

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[14] The skyrocketing increase in hospitalization and medical expense during the past two years alone is evidenced by the fact that the legislative allowance for these items alone leaped from $38,600,000 in the fiscal year ending June 30, 1967 to $61,200,000 for the fiscal year ending June 30, 1968.

It is a conceivable fact that in light of the foregoing factors the Pennsylvania Legislature enacted the one-year residence eligibility requirement to serve predictive purposes in making its appropriations for public assistance.

The foregoing establishes that the Pennsylvania one-year residence eligibility requirement "cannot be condemned as so lacking in rational justification as to offend due process." Flemming v. Nestor, 363 U.S. 603 (1960). In that case the Supreme Court explicitly stated, at page 612, that the factor of residence "can be of obvious relevance to the question of eligibility." It did so in ruling constitutional Section 202(n) of the Social Security Act, 42 U.S.C.A. §402(n), which provides for termination of old-age, survivor, and disability insurance benefits payable to, or in certain cases in respect of, an alien individual who is deported under §241(a) of the Immigration and Nationality Act, 8 U.S.C.A. §1251(a), on any one of certain grounds specified in §202(n).

It is pertinent to call attention to the fact that Congress in enacting the Social Security Act provided, in Section 202(t), 42 U.S.C.A. §402(t), for termination of benefits payable under the Act to any alien beneficiary who had resided outside the United States for more than six months.

For the reasons stated, I am of the opinion that the one-year residence eligibility requirement of Section 432(6) of the Pennsylvania Public Welfare Code, Act of June 13, 1967 does not contravene the Fourteenth Amendment.

This must be added. The majority's opinion does not advert to the plaintiffs' alternative claim that the one-year residence eligibility requirement is unconstitutional because it abridges their right of freedom to travel from one state to another.

In my opinion that alternative claim is so specious and unfounded that it does not merit extended discussion. It is only necessary to say that the Pennsylvania statute does not "prohibit" travel into the Commonwealth as evidenced by the facts that the plaintiffs in the instant case were freely permitted entry. The fact that the one-year eligibility requirement may operate to affect a decision to travel into Pennsylvania cannot by any stretch of the imagination be construed as a "statutory" bar to travel.